

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 387.

EBEN J. KNOWLTON AND THOMAS A. BUFFUM, EXECUTORS OF THE LAST WILL AND TESTAMENT OF EDWIN F. KNOWLTON, DECEASED, PLAINTIFFS IN ERROR,

vs.

FRANK R. MOORE, UNITED STATES COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT, STATE OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NEW YORK.

FILED AUGUST 30, 1890.

(17,501.)



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INDEX.

	Original.	Print.
Notice of appearance and request for summons	1	1
Summons and return	2	1
Amended complaint	3	2
Exhibit A—Will of Edwin F. Knowlton	11	6
B—Legacy returned by executors of Edwin F. Knowlton	26	13
C—Collector's notice of and demand for taxes assessed	32	18
D—Letter of executors to the collector, April 12, 1899	33	18
E—Letter of collector to the executors, April 17, 1899	35	19
Form 21, internal-revenue service	37	20
F—Check of executors to the collector, April 17, 1899	38	20
G—Letter of executors to the collector, April 18, 1899	39	21
H—Collector's receipt to executors, April 18, 1899	41	22
I—Claim of executors for refund	42	22
J—Decision of commissioner rejecting claim	48	25
K—Letter of collector to Charles H. Otis, May 10, 1899	49	26

INDEX.

	Original.	Print
Appearance for defendant	50	
Demurrer to amended complaint.....	52	26
Order sustaining demurrer, &c.	53	27
Judgment	54	28
Petition for writ of error and order allowing same..	56	28
Assignment of errors	58	29
Bond on writ of error	61	30
Clerk's certificate....	65	32
Marshal's return of service of writ of error	66	33
Writ of error	67	33
Marshal's return of service of citation	70	34
Citation	71	34

1 United States Circuit Court for the Eastern District of New York.

EBEN J. KNOWLTON and THOMAS A. BUFFUM, as Executors of
and under the Last Will and Testament of Edwin F. Knowl-
ton, Deceased, Pl'tffs,

against

FRANK R. MOORE, as United States Collector of Internal Reve-
nue, First District, State of New York, Def't.

Please to enter my appearance as attorney for the plaintiffs in the
above-entitled cause and issue summons to the marshal for service
upon the defendant above named.

CHARLES H. OTIS,
Attorney for Plaintiff.

Dated May 12, 1899.

To the clerk of the circuit court of the United States for the eastern
district of New York.

Endorsed: Notice of appearance and requisition for summons.
Filed the 12th day of May, 1899.

2 United States Circuit Court for the Eastern District of New
York.

EBEN J. KNOWLTON and THOMAS A. BUFFUM, as Executors of
and under the Last Will and Testament of Edwin F. Knowl-
ton, Deceased, Pl'tffs,

against

FRANK R. MOORE, as United States Collector of Internal Reve-
nue, First District, State of New York, Defend't.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action
and to file your answer and serve a copy thereof on the plaintiffs'
attorney within twenty days after the service of this summons, ex-
clusive of the day of service, and in case of your failure to appear
or answer judgment will be taken against you by default for the
relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the
United States, at the borough of Brooklyn, this 12th day
[L.S.] of May, in the year one thousand eight hundred and ninety-
nine.

B. LINCOLN BENEDICT, *Clerk.*

CHARLES H. OTIS,
Plaintiff's Attorney.

Office and post-office address, 189 Montague street, borough of
Brooklyn, New York city, New York.

(Endorsed :) United States circuit court, eastern district of New York. Eben J. Knowlton *et al.*, as executors, &c., of Edwin F. Knowlton, deceased, *vs.* Frank R. Moore, as U. S. collector of internal revenue. Case No. 1. Original. Summons Charles H. Otis, plaintiffs' attorney. To the defendant within named. Take notice that upon default judgment will be taken for the sum of — dollars in money, with interest from the — day of —, 189—, besides cost. — — —, plaintiff's attorney. Filed May 12, 1899.

UNITED STATES OF AMERICA, }
Eastern District of New York, } ss:

I hereby certify that on the 12th day of May, 1899, at Federal building, I personally served the within summons & complaint on the within-named defendant, Frank R. Moore, by showing him the same and delivering to and leaving with him a true copy thereof.

CHARLES J. HAUBERT,

U. S. Marshal,

By HENRY R. EVARTS, *Deputy.*

3 United States Circuit Court, Eastern District, State of New York.

EBEN J. KNOWLTON and THOMAS A. BUMFUM, as Executors of and under the Last Will and Testament of Edwin F. Knowlton, Deceased, Plaintiffs, <i>against</i>	}	Amended Complaint. No. 1.
FRANK R. MOORE, as United States Collector of Internal Revenue, First District, State of New York, Defendant.		

The above named plaintiffs, as and for their amended complaint and cause of action against the defendant above named, allege:

I. That the defendant, Frank R. Moore, was at all the times herein referred to and now is United States collector of internal revenue for the first district, State of New York.

II. That heretofore and on the 25th day of October, A. D. 1898, Edwin F. Knowlton departed this life, being at the time of his decease a resident of the borough of Brooklyn, county of Kings, city and State of New York, in the eastern district of New York, leaving a last will and testament and codicil, wherein and whereby he did nominate, constitute, and appoint as executors thereof these plaintiffs, and which said last will and testament and codicil were

4 duly admitted to probate by the surrogate's court of the county of Kings, State of New York, on the 14th day of November, A. D. 1898, and on the same day letters testamentary of and under the said last will and testament and codicil were duly issued by and out of the said surrogate's court to these plaintiffs. Annexed hereto and marked Exhibit "A" is a copy of the said last will and testament and codicil, which are hereby made a part of this complaint as though here inserted at length.

III. That the value of the personal property and estate of said Edwin F. Knowlton on the 25th day of October, A. D. 1898, the date of his decease, as fixed and determined by appraisers duly appointed, was the sum of \$2,624,029.63, and the amount of the debts of the decedent, his funeral expenses, commissions of executors, and general expenses of administration have amounted to or will amount to the sum of \$64,129.69, leaving a net value as so appraised of the personal estate of said testator passing to the legatees named in his last will and testament of \$2,559,899.67.

IV. That thereafter and on or about the 31st day of March, A. D. 1899, these plaintiffs, upon demand of the defendant, did make and render to the said defendant, as such collector aforesaid, a schedule, list, or statement in duplicate of the amount of the legacies bequeathed by said last will and testament, and at the direction of the defendant, as such collector, did include in said statement certain sums claimed and alleged by the said defendant, as such collector, to be the amount of duty which had accrued thereon, verified by the oath of these plaintiffs, under

5 and pursuant to the provisions of sections 29 and 30 of an act of Congress of June 13, 1898, entitled "An act to provide ways and means to meet war expenditures, and for other purposes," administered according to law, and at the same time did file with the said statement a protest on the part of these plaintiffs, as such executors aforesaid, in writing, a copy of which said statement and protest filed therewith is hereto annexed and marked Exhibit "B" and is hereby made a part of this complaint as though here inserted at length.

V. That as these plaintiffs are informed and verily believe, the said defendant, as such collector, did make return of the said statement and protest and of the said alleged tax to the United States Commissioner of Internal Revenue, who did thereafter and on or about the 12th day of April, A. D. 1899, assess or attempt to assess against the said plaintiffs, as such executors aforesaid, an alleged tax of \$42,084.67, under the alleged and pretended authority of sections 29 and 30 of an act of Congress of June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," and did transmit the same to the defendant, as such collector, for collection.

VI. Thereafter and on or about the 12th day of April, A. D. 1899, the defendant, as such collector, did cause to be served upon these plaintiffs, as such executors aforesaid, a notice in writing that the 6 said alleged tax had been assessed against these plaintiffs, and did make demand for the said tax, a copy of which said notice and demand is hereto annexed and marked Exhibit "C" and is hereby made a part of this complaint as though here inserted at length.

VII. That thereafter and on the 17th day of April, A. D. 1899, these plaintiffs did cause to be delivered to the defendant, as such collector, a protest in writing against the alleged and pretended assessment of the said alleged tax, and did therein refuse to make payment of the same. A copy of said written protest and refusal

is hereto annexed and marked Exhibit "D" and is hereby made a part of this complaint as though here inserted at length.

VIII. That on the 17th day of April, A. D. 1899, these plaintiffs, as such executors aforesaid, did receive from the defendant, as such collector, a notice that unless the said alleged tax should be paid on or before April 22, 1899, a penalty of five per centum and interest would be added thereto and a notice of the aggregate amount due would then be served upon these plaintiffs, and at the end of ten days from such service, unless the amount claimed therein should have been paid, distress warrant would issue and the defendant, as such collector, would proceed to collect the said sum as provided in section 3187 of the Revised Statutes of the United States, wherein and whereby the said defendant, as such collector, did threaten to enforce the collection and payment of the said alleged tax by issuance of distress warrant as aforesaid. Annexed hereto and marked Exhibit "E" is a copy of said communication of April 17, 1899,

7 containing the aforesaid threat, which is hereby made a part of this complaint as though here inserted at length.

IX. Thereafter and on the 18th day of April, A. D. 1899, upon compulsion of the aforesaid threat of the defendant, as such collector, and to prevent the addition of the aforesaid penalty of five per centum of the said alleged tax, and to prevent issuance and execution of a distress warrant to enforce the collection of the said alleged tax, these plaintiffs did pay to the defendant, as such collector aforesaid, under protest, the sum of \$42,084.67, the amount of the said alleged tax, by the certified check of these plaintiffs, as such executors aforesaid, and did at the same time deliver to the defendant, as such collector, a further protest against the said alleged assessment and tax and his threat to enforce payment of the same by issuance and execution of distress warrant. Annexed hereto and marked Exhibits "F" and "G" respectively are true copies of the said check and the said written protest accompanying the same, which are hereby made part of this complaint as though here inserted at length.

X. That upon the delivery of the said certified check for \$42,084.67, as aforesaid, the said defendant, as such collector aforesaid, did deliver to these plaintiffs, in duplicate, receipts for the aforesaid amount, showing that the same had been paid under protest. Annexed hereto and marked Exhibit "H" is a copy of the said receipts.

8 XI. That thereafter and on or about the 20th day of April, A. D. 1899, these plaintiffs, as such executors aforesaid, did make an appeal in writing to the United States Commissioner of Internal Revenue to reinstate, refund, and pay back to these plaintiffs, as such executors as aforesaid, the said alleged tax upon the ground that the said alleged assessment and the said alleged tax and the exaction of payment thereof were erroneous and improper, and that the said alleged tax was null and void and of no binding force or effect, for the following reasons, among others:

The provisions of sections 29 and 30 of the act of Congress of June 13, 1898, entitled "An act to provide ways and means to meet

war expenditures, and for other purposes," under which it is sought to impose, assess, and collect the said tax or duty, are in violation of the provisions of article I, sections 8 and 9, of the Constitution of the United States, and are therefore void, and the said tax is therefore void. Annexed hereto and marked Exhibit "I" is a copy of the said appeal to the said United States Commissioner of Internal Revenue, which is hereby made a part of this complaint as though here inserted at length.

XII. That the said The United States Commissioner of Internal Revenue did deny and reject the said appeal and claim of these plaintiffs, and did refuse to remit or refund the said alleged tax or any part thereof, and the defendant, as such collector aforesaid, on or about the 10th day of May, A. D. 1899, did cause to be served

upon these plaintiffs, as such executors, a written notice of
9 such denial and rejection, copies whereof are hereto annexed
and marked Exhibits "J" and "K" and are hereby made a part of this complaint as though here inserted at length.

XIII. That, as these plaintiffs are advised and verily believe, the said alleged assessment and tax are wholly illegal, null, void, and of no force or effect, for that the provisions of the aforesaid act of Congress under which it was sought to impose and assess the said alleged duty or tax are unconstitutional and void, and especially are in direct violation of the provisions of article I, sections 8 and 9, of the Constitution of the United States, which are as follows:

ART. I, SECTION 8. The Congress shall have power—

SUB. 1. To lay and collect taxes, duties, imposts and excises; to pay the debts, and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

ART. I, SECTION 9, SUB. 4. No capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken.

Wherefore these plaintiffs demand judgment against the defendant for the sum of \$42,084.67, with interest thereon from the 18th day of April, A. D. 1899.

CHAS. H. OTIS,
Att'y for Plaintiffs.

Office and post-office address, No. 189 Montague street, borough of Brooklyn, city of New York, N. Y.

10 STATE OF NEW YORK, } ss:
County of Kings,

Eben J. Knowlton and Thomas A. Buffum, being duly and severally sworn, each for himself deposes and says that the foregoing amended complaint is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

EBEN J. KNOWLTON.
THOS. A. BUFFUM.

Sworn to before me this 1st day of June, A. D. 1899.

JOHN F. REGAN,

Commissioner of Deeds, City of New York,

Residing in the Borough of Brooklyn.

11

EXHIBIT "A."

The Last Will and Testament of Edwin F. Knowlton, of the City of Brooklyn, County of Kings and State of New York.

I, Edwin F. Knowlton, of said city of Brooklyn, do hereby make, publish, and declare this my last will and testament in manner and form following—that is to say :

First. I direct my executors hereinafter named to pay and discharge all my just debts and liabilities and funeral expenses.

Second. I give and bequeath to my beloved daughter, Mary Countess von Francken Sierstorff, now residing in Germany, if she shall survive me, all my books, pictures and picture frames, household goods and furniture, table and silver ware, articles of wearing apparel, articles of ornament, all souvenirs and mementoes and all articles of personal property that may be in my dwelling house or houses at the time of my death, except my gold watch and chain, which I hereby give to my brother George W. Knowlton.

Third. I give and bequeath to the Unitarian church of West Upton, Massachusetts, five thousand dollars.

Fourth. I give and bequeath to my beloved sister Charlotte A. Batchelor, five thousand dollars.

12 Fifth. In view of my desire hereinafter expressed that my brother Eben J. Knowlton, shall act as one of the executors of this my will without compensation, I hereby give and bequeath to him ten thousand dollars, and I direct that the same shall be in lieu of all commissions or other compensation to him as one of my executors, and I give and bequeath to my said brother Eben J. Knowlton, the further sum of one hundred thousand dollars.

Sixth. In view of my desire hereinafter expressed, that Thomas A. Buffum, of the city of Brooklyn, shall act as one of the executors of this my will without compensation, I hereby give and bequeath to him five thousand dollars and direct that the same shall be in lieu of all commissions or other compensation to him as one of my executors.

Seventh. I give and devise to my said daughter Mary Countess von Francken Sierstorff if she shall survive me, my house and lot corner of Columbia heights and Pierrepont street in the city of Brooklyn, county of Kings and State of New York, being the same premises described in deed from Seth Low and Annie W. S. Low, his wife, to myself, dated January 6th, 1890, and recorded in the office of the register of the county of Kings in Liber 1938 of Conveyances, page 334, and also my stable and lot on College place in said city, being the same premises described in deed from Frank T. King to myself, dated January 31st, 1895, and recorded in said register's office in Liber 1 of Conveyances in section 1, block 236,

page 144, to have and to hold to her, her heirs and assigns forever.

13 Eighth. I hereby give and bequeath to my said daughter Mary Countess von Francken Sierstorpff if she shall survive me, one hundred thousand dollars.

Ninth. I am intending, during my life, to accomplish the incorporation, establishment and endowment of a free public library with reading and art rooms to be located in the village of West Upton in the town of Upton and State of Massachusetts to be known as the "Knowlton memorial library" for the use of the people of the said town of Upton under such regulations as the managers of the corporation may prescribe, but should I not accomplish the same during my life, then I direct my executors and the survivor of them, during their lives or the life of the survivor of them and within two years after my death, to procure the formation of a corporation with capacity to establish such a free public library with reading and art rooms as above more fully specified, either by act of the legislature of the State of Massachusetts or under the general laws of that State, and I direct my said executors and the survivor of them to retain in their hands forty thousand dollars until such incorporation shall be obtained, but not beyond the time above specified, and upon such incorporation being obtained within such time I direct my said executors and the survivor of them to pay the said sum of forty thousand dollars to the corporation so to be created for the uses and purposes for which it is so to be created, and I make

this further provision, if competent for me to do so, to wit: 14 that the approval by my said executors or the survivor of them of the form of the charter of said corporation shall be conclusive and binding upon all persons whomsoever to establish the right of my said executors and the survivor of them to pay said sum to the corporation so formed.

If, however, such corporation shall have taken place in my lifetime, then I give to such corporation such sum as, with whatever amount I shall have given to it during my lifetime, shall make altogether the sum of forty thousand dollars, and I hereby fully empower my executors and the survivor of them to examine and determine in such way as they or he may deem proper the proper amount that may be required to make up the said full sum of forty thousand dollars and their decision in the matter shall be conclusive upon all parties interested.

Tenth. All the rest, residue and remainder of my property of every name and nature and wheresoever situated not required to satisfy the foregoing provisions of this my will including any of the gifts hereinbefore made that may lapse or fail to take effect, I dispose of as follows:

Unless all the trusts hereafter provided for shall wholly fail to take effect, I direct my executors hereinafter appointed to pay and deliver over one-half of my said residuary estate as near as they can conveniently arrive thereat, to the Brooklyn Trust Company and the balance thereof to the Franklin Trust Company, both in the city of Brooklyn, in trust if my said daughter shall survive me, to

15 keep the same duly invested and to pay the income thereof semi-annually to my said daughter during her natural life, said companies to so arrange, if possible, between themselves that the semi-annual income shall be paid by one in January and July and by the other in April and October, and

Upon her death I direct each of said trust companies to divide the trust fund or estate held by it into as many equal shares as shall be the number her children who shall survive her and those who shall have died leaving lawful issue who shall survive her, and to set apart one share for each of said children so surviving her and such issue of each deceased child; and

To each of the said children surviving her who shall be in being at my death, to pay the income of the share set apart for him or her, to him or her during his or her natural life, and upon his or her death to pay the principal of such share in equal proportions to his or her lawful issue then living, if any, *per stirpes* and not *per capita*, and, if not any, then to pay and distribute one-half of such principal to and among his or her brothers and sisters then living, if any, and the lawful issue, if any, then living of any deceased brother or sister in equal proportions, but so that such issue shall take the share their parent would have taken, if living, *per stirpes* and not *per capita*, and to pay and distribute the other half of such principal, unless there shall be no brother or sister then living, nor lawful issue then living of any deceased brother or sister, and in that

16 event, the whole of such principal to and among my nephews and nieces then living and the lawful issue then living of any nephew or niece of mine, who shall have died, in equal proportions, save only that the share for each of the children of my brother Daniel W. Knowlton, and the lawful issue of each deceased child of his shall be double the share of each of my other nephews and nieces or the share of the lawful issue of each of my other deceased nephews or nieces and that such issue shall take the share their parent would have taken if living, *per stirpes* and not *per capita*, and

I direct each of said trust companies during the life of the youngest one of those of my nephews now living who shall be living at the death of my said daughter, if any, to keep the share set apart for each child of my said daughter living at her death who shall not be in being at my death and for the lawful issue then living of each deceased child of hers duly invested and

To pay the income of each share set apart by it for each such child, to such child or in case he or she shall die during the said specified life, then in equal proportions to his or her lawful issue the survivors and survivor of them *per stirpes* and not *per capita*, and in case of failure of lawful issue, then in equal proportions to the then surviving children and lawful issue of each deceased child of my said daughter including children born before my death, the survivors and survivor of them, issue in all cases to take the share their parent would have taken if living, *per stirpes* and not *per capita*, and

17 To pay the income of each share, set apart for the lawful issue of each deceased child, in equal proportions, to such issue the survivors and survivor of them *per stirpes* and not *per capita* or should all such issue die during the said specified life then in equal proportions to the surviving children and the lawful issue of each deceased child of my said daughter, including children born before my death, the survivors and survivor of them, issue in all cases to take the share their parent would have taken if living, *per stirpes* and not *per capita*, and

To dispose of the shares so to be set apart for children not in being at my death and for the lawful issue of deceased children, on the termination of said specified life or, in case of any shares as to which the trust intended therefor shall for any reason fail to take effect, at the death of my said daughter or shall thereafter cease before the termination of said specified life, then as to such shares respectively, upon the death of my said daughter or the said subsequent cessation of the trust as the case may be, as follows, to wit:

To pay and distribute the share, set apart for each such child, to such child, if such child shall then be living and shall have lawful issue then living, or if such child shall not be living but shall have lawful issue then living, then to such issue in equal proportions, *per stirpes* and not *per capita* and if neither shall be the case, then to

18 pay and distribute such share as follows, to wit: One-half thereof to such child, if such child shall then be living, and

if not then to and among my nephews and nieces then living and the lawful issue then living of any nephew or niece of mine who shall have died in equal proportions, save only that the share for each of the children of my brother Daniel W. Knowlton, and the lawful issue of each deceased child of his, shall be double the share of each of my other nephews and nieces or the share of the lawful issue of each of my other deceased nephews or nieces, and that issue shall take the share their parent would have taken if living, *per stirpes* and not *per capita*, and to pay and distribute the other half of such share in equal proportions to and among the brothers and sisters then living, if any, of such child and the lawful issue then living, if any, of any deceased brother or sister, in equal proportions, but so that such issue shall take the share their parent would have taken if living, *per stirpes* and not *per capita*, or in case there shall be no brother or sister or lawful issue of any deceased brother or sister then living, then in equal proportions to and among my nephews and nieces then living and the lawful issue then living of any deceased nephew or niece of mine in equal proportions, save only that the share for each of the children of my brother, Daniel W. Knowlton, and the lawful issue of each deceased child of his shall be double the share of each of my other nephews and nieces or the share of the lawful issue of each of my other deceased nephews or nieces, and that issue shall take the share their parent would have taken if living, *per stirpes* and not *per capita*, and

19 To pay and distribute the share, set apart for the lawful issue of each deceased child, to such issue in equal proportion *per stirpes*

and not *per capita* if any shall then be living, and if not, then one-half thereof to and among the brothers and sisters then living, if any, of such deceased child and the lawful issue then living of any deceased brother or sister of such deceased child, in equal proportions, but so that such issue shall take the share their parent would have taken if living *per stirpes* and not *per capita*, and to pay and distribute the other half thereof, unless there shall be no such brother or sister then living, or lawful issue then living of any such deceased brother or sister, and in that event, the whole of the share, to and among my nephews and nieces, then living and the lawful issue then living of any nephew or niece of mine who shall have died, in equal proportions, save only that the share for each of the children of my brother Daniel W. Knowlton and the lawful issue of each deceased child of his shall be double the share of each of my other nephews and nieces or the share of the lawful issue of each of my other deceased nephews or nieces, and that such issue shall take the share their parent would have taken if living *per stirpes* and not *per capita*.

If my said daughter shall not survive me, but shall leave children who shall survive me, the said trust companies shall receive my said residuary estate as above specified in this article of this my
20 will, each in trust to divide the part received by it into as many equal shares as shall be the number of children of my said daughter, who shall be living at my death, and to set apart one share for each child and to keep the same duly invested and to pay the interest and income of the share, set apart for each child to such child during his or her natural life and upon the death of such child to pay the principal of such share to his or her lawful issue then living, if any, in equal proportions, *per stirpes* and not *per capita*, or if there shall be no lawful issue then living to pay and distribute one-half of such principal to and among his or her brothers and sisters then living if any, and the lawful issue, if any, then living, of any deceased brother or sister in equal proportions, but so that such issue shall take the share their parent would have taken if living, *per stirpes* and not *per capita*, and to pay and distribute the other half of such principal, unless there shall be no brother or sister then living nor lawful issue then living of any deceased brother or sister, and in that event, the whole of such principal to and among my nephews and nieces then living and the lawful issue then living of any nephews or nieces of mine who shall have died, in equal proportions, save only that the share for each of the children of my brother Daniel W. Knowlton, and the lawful issue of each deceased child of his shall be double the share of each of my other nephews and nieces or the share of the lawful issue of each of my other deceased nephews or nieces, and that issue shall take the share their parent would have taken if living *per stirpes* and not *per capita*.

If, however, my said daughter shall die leaving no child nor lawful issue of any deceased child of hers her surviving, then said trust companies shall upon her death, or if she shall so die be-

fore me, then my executors shall on my death pay over and distribute my said residuary estate as follows:—

1st. Fifty thousand dollars thereof to my son-in-law Count von Francken Sierstorff.

2nd. Fifty thousand dollars thereof to the town of Upton State of Massachusetts, to be invested by said town and the income thereof to be used for the support and maintenance of public schools in said town; also fifteen thousand dollars to said town of Upton to be invested by said town and the income thereof used for the support of such of the poor of such town as said town or its officers having charge of its poor may determine should receive help, and I recommend but do not absolutely require, that so far as may be needed and as may be practicable, said income of said fifteen thousand dollars be applied to the support of said poor of said town by aiding them in their own chosen homes or residences.

3rd. All the balance thereof with any of the foregoing legacies of fifty thousand dollars to my son-in-law, and fifty thousand dollars and fifteen thousand dollars to the town of Upton which may lapse or for any reason, fail to take effect, to and among my nephews and nieces then living and the lawful issue then living of

22 any of them who shall have died, in equal proportions, save only that the share for each of the children of my brother Daniel W. Knowlton, and the lawful issue of each deceased child of his shall be double the share of each of my other nephews and nieces or the share of the lawful issue of each of my other deceased nephews or nieces, and that such issue shall receive the share their parent would have taken, if living, *per stirpes* and not *per capita*.

Eleventh. All gifts herein made to my said daughter including all income to be paid to her, I give to her in and to her whole, sole and separate right and use free from any use, right, community, interest, administration or control of her husband, and I direct that payments thereof shall be made to her accordingly and that her sole and separate receipts shall be good and sufficient receipts as evidence of such payments.

Twelfth. I hereby appoint my brother, Eben J. Knowlton, and said Thomas A. Buffum, the executors of this my will, and in view of my gifts to them in this my will it is my desire and will that they shall serve as my executors without other compensation, and I do hereby direct and it is my will that they and each of them may act as such without giving any security, and I also direct that my said executors need not change my investments except as far as they may determine it to be necessary or needful for the best interests of my estate or the settlement thereof, and I further direct that my said executors in making payment of the legacy to my said daughter

as required above, if she shall survive me, and in making
23 the distribution of my said residuary estate to the Brooklyn
and Franklin Trust Companies or any other distributions
that may be required to make by this my will, may make such pay-
ments and distributions in such of my securities and at such a
valuation thereof as they may deem just and proper.

I hereby authorize and empower my executors and their suc-
cessors

sors, to sell and convey any or all the real estate of which I shall die seized or possessed, except such as my said daughter shall be entitled to take under this my will, at public or private sale, for such prices and on such terms as they may deem proper and in the meantime to take such care of and to so manage the same as shall seem to them proper and for the best interest of my estate.

Thirteenth. And I hereby authorize said Brooklyn and Franklin Trust Companies to continue the investments in the securities which they may so receive so far as they or their proper officers may deem it prudent to do so and in making investments of my residuary estate, I hereby authorize said trust companies in the exercise of their best judgment to invest on first mortgages on improved real estate situated within the so-called Northern States, in carefully selected first-mortgage bonds of railroad corporations; and in bonds of such manufacturing or commercial corporations as may by them or their proper officers be regarded as sound and on a good financial basis; besides such other securities as the laws of the State of New

24 York may permit trustees to invest trust funds in, preferring however, as a rule, a low rate of interest &c. paying high premiums.

And I further direct that each of said trust companies in dividing the part of my said residuary estate received by it into shares and in paying over and distributing such shares as provided in this my will may make use of any securities in which such part of my residuary estate may be invested at such valuation thereof as it or its proper officers may deem just and proper.

And for greater certainty I hereby declare it to be my intention that each of said trust companies shall be sole trustee of the property so to be paid and delivered over to it as aforesaid, and that neither shall be answerable for the other.

Lastly. I hereby revoke all former wills and codicils by me at any time made.

In witness whereof, I have hereunto set my hand and seal this twenty-eighth day of June, in the year one thousand eight hundred and ninety-seven.

EDWIN F. KNOWLTON. [L. s.]

Subscribed and sealed by Edwin F. Knowlton, the testator above named, in the presence of us and each of us and at the same time by him published and declared to be his last will and testament to us and each of us who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses this 28th day of June, 1897.

THEODORE M. TAFT,
134 St. James Place, Brooklyn, N. Y.
EDWARD H. LADD, JR.,
Plainfield, New Jersey.
HARRISON DIKE,
5 East 17th St., New York City.

25 I, Edwin F. Knowlton, of Brooklyn, having made my last will and testament bearing date the 28th day of June, 1897, do now make this codicil.

I do hereby ratify and confirm my said will in all respects save the ninth section, pertaining to the Knowlton memorial library, which section I do hereby revoke and make void, having changed my mind concerning the establishment of a library.

In witness whereof, I have hereunto set my hand and seal this 26th day of September, A. D. 1898.

EDWIN F. KNOWLTON. [L. S.]

Signed, sealed, published and declared by the said Edwin F. Knowlton as and for a codicil to his last will and testament in the presence of us, who, in his presence and in the presence of each other, have, at his request, subscribed our names as witnesses thereto.

CHARLES A. WATERBURY,
Mamaroneck, N. Y.

GEO. T. WERNER,
207 Hancock Ave., Jersey City.
G. W. KNOWLTON, JR.,
93 Clark St., Brooklyn, N. Y.

26

EXHIBIT "B."

Estate of EDWIN F. KNOWLTON.

STATE OF NEW YORK, {
County of Kings, City of New York, }^{ss:}

Eben J. Knowlton and Thomas A. Buffum, being severally duly sworn, does each for himself depose and say :

On November 14th, 1898, letters testamentary of and under the last will and testament and codicil of Edwin F. Knowlton, deceased, were granted and issued to us by and out of the surrogate's court of the county of Kings.

Said Edwin F. Knowlton died on October 25, 1898. As such executors we have paid out and disbursed, or shall pay out and disburse, the following amounts :

New York Stock Exchange Building Co., vault.....	102.00
George Sessions & Sons, undertaker, Worcester.....	286.10
Willis E. Stafford & Co., " Brooklyn.....	386.50
William Burtenshaw & Son.....	15.00
Heydenreich Bros.....	1.25
J. H. Whitley.....	4.50
James Weir's Sons.....	40.35
Amer. Dist. Telegraph Co.....	5.83
Davidson & Buckley.....	10.35
J. S. Jones.....	69.50
Edison Electric Ill. Co. of Brooklyn	24.67
John J. Purdy.....	5.25
D. H. Schults' Sons.....	91.25

27	Amount brought forward	
	George Roth.....	69.98
	S. O. Burnett.....	17.77
	Brooklyn Union Gas. Co.....	10.13
	Isaac W. Rushmore	30.00
	Smiths' Farm Dairy Co.....	5.26
	W. R. Hegeman.....	8.03
	W. H. Hart.....	61.60
	James Daly & Son.....	79.25
	Charles S. Phillips.....	40.00
	B. McCaffrey & Sons.....	111.00
	F. M. De Meli, for servants' hire, &c.....	194.29
	A. H. Muller & Son, expenses sale securities	85.00
	Rockland Lake Ice Co.....	50.00
	John J. Kelly.....	42.00
	John A. McCorkle, M. D.....	88.00
	R. M. Smiley.....	16.75
	Frederick Loeser & Co.....	19.52
	W. B. Davis	15.50
	F. M. De Meli.....	1,000.00
	T. A. Buffum	398.50
	C. A. Waterbury, funeral notices, travel, exp., &c., to January 6, 1899	47.53
	C. A. Waterbury, services	4,500.00
	Legacy to E. J. Knowlton, as compensation for services as executor	10,000.00
	Commission to which Thomas A. Buffum is entitled as executor, he having renounced the special legacy given and bequeathed to him in lieu of commission.....	26,197.32
	Expenses of administration.....	20,000.00
	Total	\$64,129.98

28 Mary, Countess von Francken Sierstorpff, the only child of Edwin F. Knowlton, deceased, and to whom was bequeathed the income from the residuary estate of the testator during the term of her natural life, was born on July 2, 1870.

EBEN J. KNOWLTON,
THOS. A. BUFFUM.

Subscribed and sworn to before me this 4th day of April, 1899.

JOHN F. REGAN,
Commissioner of Deeds, City of New York,
Residing in the Borough of Brooklyn.

29

Form No. 419, revised.

United States internal revenue.

Legacies and distributive shares.

(Sections 29 and 30, act of June 13, 1898.)

Schedule of legacies or distributive shares arising from personal property of any kind whatsoever being in charge or trust of Eben J. Knowlton and Thomas A. Buffum, as executors, said property passing from Edwin F. Knowlton, deceased, of the borough of Brooklyn, county of Kings, city and State of New York, who deceased upon the 25th day of October, 1898, to the persons herein-after mentioned by will; also the amount of such property, together with the amount of duty or tax which has accrued or should accrue thereon, agreeably to the provisions of the Internal-revenue laws of the United States, except that we allege and insist that sections 29 and 30 of said act are unconstitutional and void.

Appraised value of personal estate, \$2,624,029.63.

30 Names of persons entitled to beneficial interest in said property.	Relationship of beneficiary to person who died possessed.	Clear value of legacy.	Legacies exempt.	Amount tax-able.	Rate for every \$100.	Amount of tax.
Mary, Countess von Francken Sierstorpff..... Furniture..... Cash legacy Income for life on residuary estate amounting to \$2,348,754.67. Countess Sierstorpff became 28 years of age on July 2, 1898. Present value of her life interest in said residuary estate, estimated according to United States tables, is..... Total	Daughter.	\$1,065. 100,000.				
Mary, Countess von Francken Sierstorpff..... Furniture..... Cash legacy Income for life on residuary estate amounting to \$2,348,754.67. Countess Sierstorpff became 28 years of age on July 2, 1898. Present value of her life interest in said residuary estate, estimated according to United States tables, is..... Total	Brother..... Sister..... Brother..... None.....	\$1,731,996.35 100,000. 5,000,00..... 100,000,00..... 5,000,00.....		\$1,731,996.35 100,000..... 5,000,00..... 100,000,00..... 5,000,00.....	2.25 2.25 2.25 2.25 15.	38,969.92 2.25 112.50 2,250.00 750.00
George W. Knowlton..... Charlotte A. Batchelor..... Eben J. Knowlton..... Unitarian Church of West Upton, Mass..... The remainder of said residuary estate is subject to contingencies, and the individuals who will ultimately become entitled to the same of their degree of relationship to the testator cannot be determined until after the termination of two lives now in being. The present value of the said remainder of said residuary estate, estimated as aforesaid, is \$717,803.30		717,803.30				
Total		\$2,565,599.65	.....	.....	.....	\$1,842,096.35 42,084.67

We, the undersigned executors of the last will and testament and codicil of Edwin F. Knowlton, deceased, do hereby protest against the assessment of tax or duty above set forth or the assessment of any tax or duty upon the personal property of the estate of Edwin F. Knowlton which we have in charge or trust as such executors, or against any of the legacies bequeathed by the said last will and testament and codicil, and we further protest against any proceedings or process against us or either of us or against the personal property in our hands as such executors to enforce the payment or collection thereof upon the following grounds, to wit:

1. The provisions of the act of Congress under which it is sought to impose, assess, and collect the said tax or duty are in violation of the provisions of article I, sections 8 and 9, of the Constitution of the United States, and are therefore void.

31 2. The legacies to George W. Knowlton, Charlotte A. Batchelor, the Unitarian Church of West Upton, Mass., each amount to less than \$10,000, and are not subject to any tax or duty under the said provisions of the said act of Congress, even if such provisions be not unconstitutional and void.

3. The legacy to Eben J. Knowlton, a brother of the testator, amounts to only \$100,000, and under the said provisions of the said act should be taxed at the rate of \$1.12½ per \$100, and not at the rate of \$2.25 per \$100, even if said act be not unconstitutional and void.

4. We hereby declare that the rates and amounts of the tax or duty above set down were so set down in the foregoing statement at the direction of the collector of internal revenue for the first district of New York, and we hereby protest against such direction.

Dated at Kings county, N. Y., this 30th day of March, 1899.

(Signed)

EBEN J. KNOWLTON.
THOMAS A. BUFFUM.

We do swear that the above statement is, to the best of our knowledge and belief, just and true, and that we have taken all the means in our power to make it so, except that we allege and insist that sections 29 and 30 of said act are unconstitutional and void.

(Signed)

EBEN J. KNOWLTON,
THOMAS A. BUFFUM,

*Executors of the Last Will and Testament
and Codicil of Edwin F. Knowlton, Dec'd.*

Before me—

JOHN F. REGAN,

*Commissioner of Deeds, City of New York,
Residing in the Borough of Brooklyn.*

[Endorsed:] Form No. 419, revised. Legacy return. First district, New York div., — 189—. Filed M'ch 31, '99. Demand made April 4, '99.

32

EXHIBIT "C."

17. Revised April, 1895.

Notice of and Demand for Taxes Assessed.

United States internal revenue, office of the collector of internal revenue, 1st district.

List of month of Mar., 1899, —— div.

STATE OF N. Y., April 12, 1899.

Mr. Eben J. Knowlton:

You are hereby notified that a tax under the internal-revenue laws of the United States, amounting to forty-two thousand eighty-four and $\frac{6}{100}$ dollars, the same being a tax upon legacy Knowlton, has been assessed against you by the Commissioner of Internal Revenue and transmitted by him to me for collection. Demand is hereby made for this tax. This tax is due and payable on or before the 22 day of April, and unless paid within ten days after this notice and demand it will become my duty to collect the same, with a penalty of five per centum additional and interest at one per centum per month.

Payment may be made to me at my office.

(Signed)

FRANK R. MOORE, Collector.

Bring this notice with you.

33

EXHIBIT "D."

Estate of EDWIN F. KNOWLTON.

APRIL 12, 1899.

Frank R. Moore, Esq., collector of internal revenue, first district, State of New York.

DEAR SIR: We, the undersigned, executors of the last will and testament and codicil of Edwin F. Knowlton, deceased, hereby acknowledge the receipt of your demand under date of April 12, 1899, notifying us that a tax under the internal-revenue laws of the United States amounting to \$42,084.67, same being a tax upon the legacy—Knowlton—has been assessed against us by the Commissioner of Internal Revenue and transmitted by him to you for collection and demanding the said tax and advising us that it is due and payable on or before the 22d day of April, 1899, and that unless paid within ten days after said notice and demand it will become your duty to collect the same with a penalty of five per centum additional and interest at the rate of one per centum per month.

We, as such executors aforesaid, hereby protest against the said alleged tax and any proceedings upon your part to collect the same, and hereby refuse to pay the said tax upon the following grounds, to wit:

1. The provisions of the act of Congress under which it is sought to impose, assess, and collect the said tax or duty are in violation of the provisions of article I, sections 8 and 9, of the Constitution of the United States, and are therefore void, and the said tax is therefore void.

34 2. The legacies to George W. Knowlton, Charlotte A. Batchelor, the Unitarian church of West Upton, Mass., each amount to less than \$10,000, and are not subject to any tax or duty under said provisions of the said act of Congress, even if said provisions be not unconstitutional and void.

3. The legacy to Eben J. Knowlton, the brother of the testator, amounts to only \$100,000, and under the said provisions of the said act should be taxed at the rate of \$1.12 $\frac{1}{2}$ per \$100 and not at the rate of \$2.25 per \$100, even if the said tax be not unconstitutional and void.

Very truly yours, EBEN J. KNOWLTON,
THOS. A. BUFFUM,

*Executors of the Last Will and Testament and Codicil of
Edwin F. Knowlton, Deceased.*

35

EXHIBIT "E."

Internal-revenue service, first district of New York, collector's office.

BROOKLYN, N. Y., April 17, 1899.

Messrs. Eben J. Knowlton and Thomas A. Buffum, executors of the last will and testament of Edwin J. Knowlton, deceased.

GENTLEMEN: I beg to acknowledge the receipt of your letter of April 14th, in which you refuse to pay the tax assessed against the estate of Edward F. Knowlton, amounting to \$42,084.67, which assessment was laid by the Hon. Commissioner in the March list, notice of which, on form 17, was duly served upon you on April 12th.

I have to inform you that section 3187 of the Revised Statutes provides: "If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with five per centum additional thereto, and interest as aforesaid by distress and sale in the manner hereafter provided."

Unless, therefore, the tax, of which you have received notice under date of April 12th, is paid on or before April 22nd, five per centum and interest upon the same will be added thereto and a notice on form 21 of the aggregate amount due will be served upon you, and at the end of ten days from such service, unless the amount claimed therein shall have been paid, distress warrant will issue and I shall proceed to collect the said sum as provided in section 3187, Revised Statutes, above quoted.

I enclose herewith a copy of the form 21 to which I have referred.

Respectfully,
(Signed) FRANK R. MOORE, Collector.

General Demand for Taxes.

Internal-revenue service, — district of ——.
— list.

COLLECTOR'S OFFICE, ——, 189—.

M.— ——:

A tax under the internal-revenue laws of the United States, amounting to —¹⁰⁰₀₀ dollars, being for ——, has been assessed against you by the Commissioner of Internal Revenue and transmitted by him to me for collection. The same not having been paid within the time required by law, you became liable to pay five per centum additional upon the amount thereof, and interest, at the rate of one per centum per month, from the — day of ——, 189—, and demand is hereby made upon you for the said tax, with the additional five per centum, and such interest as may accrue before payment. If not paid within ten days from the personal service or mailing hereof, it will become my duty to collect the same by distraint and sale of property.

Payment may be made to —— at ——.

Am't of tax...	\$
Penalty	———

Total

———, Collector.

Bring this notice with you.

No. 7587. \$42,084.

NEW YORK, April 17th, 1899.

The Central National bank of the City of New York

Pay to the order of Frank R. Moore, collector, forty-two thousand & eighty-four ¹⁷₀₀ dollars.

\$42,084.67.

E. J. KNOWLTON,
THOS. A. BUFFUM,

*As Executors of the Last Will and Testament of
Edwin F. Knowlton, Deceased.*

[On the margin:] E. F. Knowlton.

The following words were written across the face of the check: "Paid upon compulsion and under protest to prevent distraint and penalty." "Certified: Luysly, teller Central nat'l bank. Payable through clearing-house."

EXHIBIT "G."

APRIL 18, 1899.

Estate of EDWIN F. KNOWLTON.

Frank R. Moore, Esq., collector of internal revenue, first district,
State of New York.

DEAR SIR: We, the undersigned executors of the last will and testament and codicil of Edwin F. Knowlton, deceased, hereby acknowledge the receipt of your favor of April 17, 1899, in which you quote the provisions of section 3187 of the Revised Statutes of the United States, and advise us that unless the tax assessed and imposed upon the legacies bequeathed by the said last will and testament and codicil, of which we received notice under date of April 12, is paid on or before April 22, five per centum and interest upon the same will be added thereto, and a notice of form 21 of the aggregate amount due will be served upon us, and at the end of ten days after such service, unless the amount claimed therein shall have been paid, a restraint warrant shall issue, and that you shall proceed to collect the said sum, as provided in section 3187 of the Revised Statutes, and enclosing a copy of the form 21, to which you refer in your letter.

In view of your threat therein contained to collect the said alleged and pretended tax, with the penalty of five per centum additional besides interest, we herewith hand you our certified check as such

executors, payable to your order, for the sum of \$42,084.67,
40 under the compulsion of your said threat, and for the purpose
of preventing the addition of the five per centum penalty and interest and for the purpose of preventing the issuance of restraint warrant; and we hereby protest against the said tax and against your threat to collect the same by issuance and execution of restraint warrant or other legal process, and hereby make payment of the said alleged tax under protest and upon compulsion of your threat in your said letter of April 17, 1899, contained.

The grounds of our protest against the said payment are as follows:

1. The provisions of the act of Congress under which it is sought to impose, assess, and collect the said tax or duty are in violation of the provisions of article I, sections 8 and 9, of the Constitution of the United States, and are therefore void, and the said tax is therefore void.

2. The legacies to George W. Knowlton, Charlotte A. Batchelor, the Unitarian Church of West Upton, Mass., each amount to less than \$10,000, and are not subject to any tax or duty under said provisions of the said act of Congress, even if said provisions be not unconstitutional and void.

3. The legacy to Eben J. Knowlton, the brother of the testator, amounts to only \$100,000, and under the said provisions of the said act should be taxed at the rate of \$1.12 $\frac{1}{2}$ per \$100, and not at the

rate of \$2.25 per \$100, even if the said tax be not unconstitutional and void.

(Signed)

EBEN J. KNOWLTON,

THOS. A. BUFFUM,

*Executors of the Last Will and Testament and Codicil
of Edwin F. Knowlton, Deceased.*

41

EXHIBIT "H."

No. 560,856.

(Form No. 1. Revised April 28, 1876.)

Collector's office, United States internal revenue, 1st district of New York.

BROOKLYN, April 18th, 1899.

Received of estate of Edwin F. Knowlton forty-two thousand eighty-four & $\frac{67}{100}$ dollars, tax on—

Legacies.....	.....	\$42,084.67
.....
Unassessed penalty.....	.....	.....
Interest, — years — months .....	.....	.....

Total.....	\$42,084.67
------------	-------	-------	-------------

said amount of tax being assessed on monthly list for March, 1899.

\$42,084.67.

(Signed)

WILLIAM CADZOW,
Ass't Cashier.

The following words were written across the face of the above : " Paid under protest. Wm. Cadzow, ass't cashier. John E. Burns, chief deputy collector, 1st district, Brooklyn."

42

EXHIBIT "I."

(Form 46. Revised June 3, 1880.)

United States internal revenue.

Claim, under series 7, No. 14, for taxes improperly paid.

STATE OF NEW YORK, }
County of Kings, }^{ss:}

Eben J. Knowlton and Thomas A. Buffum, of the borough of Brooklyn, county of Kings, city and State of New York, being each for himself duly and severally sworn according to law, does each for himself depose and say : I am an executor named in the last will and testament and codicil of Edwin F. Knowlton, late of the borough of Brooklyn, county of Kings, city and State of New York, deceased.

The last will and testament of said Edwin F. Knowlton was duly admitted to probate by the surrogate's court of the county of Kings on the fourteenth day of November, A. D. 1898, and upon the same day letters testamentary were issued by and out of said court to me and to my co-executor. On or about the 12th day of April, A. D. 1899, I, as such executor, in conjunction with my co-executor, was assessed by the Commissioner of Internal Revenue an internal-revenue tax of \$42,084.67 as and for an alleged tax or duty assessed or imposed, under and pursuant to the assumed and pretended authority of the provisions of sections 29 and 30 of the act of Congress

of June 13, 1898, entitled "An act to provide ways and means
43 to meet war expenditures, and for other purposes," upon the
legacies arising from the personal property bequeathed in
and by said last will and testament.

After the imposition of the said alleged tax and on or about the 12th day of April, A. D. 1899, Frank R. Moore, Esq., collector of internal revenue, first district, State of New York, did cause to be served upon me and my co-executor a certain notice in writing that the said alleged tax had been assessed against me and my co-executor by the Commissioner of Internal Revenue and transmitted by said Commissioner to said collector for collection, and demanding the said tax and notifying me and my co-executor that the said tax would become due and payable on or before the 22d day of April, and unless paid within ten days it would become his duty to collect the same with a penalty of five per centum additional and interest at one per cent. per month. Thereupon I and my co-executor refused, in writing, to pay the said tax. Thereafter and on the 17th day of April, A. D. 1899, the said Frank R. Moore, Esq., collector, did notify me and my co-executor in writing that unless the said alleged tax should be paid on or before April 22d five per centum and interest upon same would be added thereto and notice of form 21 of the aggregate amount due would be served upon me and my co-executor, and at the end of ten days from such service, unless the amount claimed therein should have been paid, distress warrant would issue, and that he should proceed to collect the said sum as provided in section 3187 of the Revised Statutes of the United

44 States. Thereafter and on or about the 18th day of April,

A. D. 1899, I, together with my co-executor, did pay the said sum of \$42,084.67 to the said Frank R. Moore, Esq., collector, under protest and for the purpose of preventing the addition of the said penalty of five per centum and the issuance and execution of distress warrant. The said assessment and payment of the aforesaid alleged tax was, as this deponent verily believes, erroneous and improper, and the said alleged tax was null, void, and of no binding force or effect for the following reasons, namely:

1. The provisions of said sections 29 and 30 of said act of Congress under which the said tax was imposed, assessed, and collected are in violation of the provisions of article I, sections 8 and 9, of the Constitution of the United States, and are therefore void.

2. The legacies to George W. Knowlton, Charlotte A. Batchelor, the Unitarian Church of West Upton, Mass., each amount to less

than \$10,000, and are not subject to any tax or duty under the said provisions of the said act of Congress, even if said provisions be not unconstitutional and void.

3. The legacy to Eben J. Knowlton, brother of the testator, amounts to only \$100,000, and under the said provisions of the said act should be taxed at the rate of \$1.12½ per \$100 and not at the rate of \$2.25 per \$100, even if the said act be not unconstitutional and void.

And I now claim that, by reason of the aforesaid erroneous and illegal assessment and payment of the said sum of \$42,084.67,
 45 I, together with my co-executor, am justly entitled to have the sum of \$42,084.67 refunded, and I now ask and demand the same, and I further make oath that I have not heretofore presented any claim for the refunding of the above amount or any part thereof.

EBEN J. KNOWLTON.
 THOS. A. BUFFUM.

Sworn and subscribed before me this 20th day of April, 1899.

FRED'K H. CHASE,
Notary Public, Kings County.

46 I, Samuel H. Andrews, deputy collector, — division, first district, being duly sworn according to law, depose and say that I have personally investigated the statements made in the within affidavits, and from the best information I can obtain, after careful inquiry, I believe such statements to be in all respects just and true.

SAMUEL H. ANDREWS,
Deputy Collector, — Division, First District.

Sworn to and subscribed before me this 20 day of April, A. D. 1899.

M. L. BAYER, *Dep. Coll.*

Certificate of Clerk in Charge of Records in Office of Commissioner of Internal Revenue.

I hereby certify that from present personal examination I find the sum of — dollars and — cents reported against the said — — — on page —, line —, of the list on form —, for —, 18—; also the sum of — dollars and — cents reported against — — —, on page —, line —, of the list on form —, for — — —, 18—, now on file in the office of the Commissioner of Internal Revenue, and that the tax included in the collector's aggregate receipt- for the said list transmitted to the Commissioner of Internal Revenue. Said receipt- amount to \$—.

Dated —, 18—.

— — —,
Clerk in Charge of Records.

Collector's Certificate.

I hereby certify that I have carefully investigated the matters set forth in the within affidavit, and am satisfied that the statements are in all respects just and true; and I further certify, upon personal examination, that I find the sum of forty-two thousand eighty-four dollars and sixty-seven cents reported against the said Eben J. Knowlton and Thomas A. Buffum, executors, on page 2, line 19, of the list on form 23, for March, 1899, and also the sum of — dollars and — cents reported against — — —, on page —, line —, of the list on form —, for — — —, 18 —, now on file in my office, and that the same was paid to me on the 18th day of April, 1899, and on 47 the — day of — — —, 18 —, and was included in my aggregate receipts for said lists, the receipts amounting to \$52,895.71 and \$—, respectively, and transmitted to the Commissioner of Internal Revenue, and that no claim for the assessment herein complained of has heretofore been presented. The money herein claimed was not paid on a compromise.

FRANK R. MOORE,
Collector First District, N. Y.

Dated April 20, 1899.

[Endorsed:] (Form 46, revised.) U. S. internal revenue. Claim for refunding taxes collected. No. in district record, — ; No. in draft record, — . Eben J. Knowlton, Thos. A. Buffum, claimant. Post-office address, 189 Montague street, room 515. Verified by Frank R. Moore, collector 1st district, N. Y. Assessed upon legacy, Knowlton. Basis of claim, not liable. Examined and — — —, 18 —, by — — —.

48

EXHIBIT "J."

TREASURY DEPARTMENT,
OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,
WASHINGTON, D. C., May 8, 1899.

Frank R. Moore, Esq., collector internal revenue, Brooklyn, N. Y.

SIR: The claim of Eben J. Knowlton and Thomas A. Buffum, executors under the will and testament of Edwin F. Knowlton, late of the borough of Brooklyn, county of Kings, city and State of New York, for the refunding of \$42,084.67, tax paid on legacies, is hereby rejected for the reason that the tax was legally assessed and collected.

Respectfully yours,
(Signed)

G. W. WILSON,
Commissioner.

(Copy.)

49

EXHIBIT "K."

Internal revenue service, first district of New York, collector's office.

BROOKLYN, N. Y., May 10, 1899.

Mr. Chas. H. Otis, 189 Montague street, Brooklyn, N. Y.

SIR: I am this morning in receipt of a letter signed by the Hon. Commissioner of Internal Revenue, a copy of which is herewith enclosed.

Respectfully,
(Signed) FRANK R. MOORE, Collector.

Endorsed: Amended complaint. Filed June 1, 1899.

50 United States Circuit Court, Eastern District of New York.

EBEN J. KNOWLTON and THOMAS A. BUFFUM, as Executors of
and under the Last Will and Testament of Edwin F. Knowlton,
Deceased, Plaintiffs,FRANK R. MOORE, as United States Collector of Internal Revenue,
First District, State of New York, Defendants.

Please take notice that I appear for the above-named defendant in the above-entitled action, and demand that a copy of all papers and notices in said action be served upon me at my office in the Post-office building, corner of Washington and Johnson streets, in the borough of Brooklyn, New York.

And the clerk of said court will please enter my appearance in this action as the attorney for the said defendant.

Dated Brooklyn, May 26th, 1899.

Yours, &c., GEORGE H. PETTIT,
U. S. Attorney for the Eastern District of New York,
51 Post-office Building, Brooklyn, N. Y.

To Charles H. Otis, att'y for plaintiff.

To B. Lincoln Benedict, Esq., clerk.

Endorsed: Notice of appearance. Filed and entered May 26th, 1899.

52 United States Circuit Court, Eastern District, State of New York.

EBEN J. KNOWLTON and THOMAS A. BUFFUM, as Executors of and under the Last Will and Testament of Edwin F. Knowlton, Deceased, Plaintiffs,

vs. FRANK R. MOORE, as United States Collector of Internal Revenue, First District, State of New York, Defendant.

Action No. 1.

The defendant above named, appearing by George H. Pettit, United States attorney for the eastern district of New York, his at-

torney, hereby demurs to the amended complaint herein upon the ground that it appears on the face of said amended complaint that the same does not state facts sufficient to constitute a cause of action.

Dated Brooklyn, New York, June 30th, 1899.

GEORGE H. PETTIT,

*United States Attorney for the Eastern District of
New York, Attorney for Defendant, Federal
Building, Brooklyn, New York.*

Endorsed: Demurrer. Filed July 1st, 1899. Demurrer sustained.
July 12th, 1899. Edward B. Thomas, U. S. J.

53 At a stated term of the circuit court of the United States of America for the eastern district of New York, in the second judicial circuit, held at the United States court-rooms, in the borough of Brooklyn, on the 17th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: The Honorable Edward B. Thomas, district judge, holding the court.

EBEN J. KNOWLTON and THOMAS A. BUFFUM, as Executors of and under the Last Will and Testament of Edwin F. Knowlton, Deceased,

vs.

FRANK R. MOORE, as United States Collector of Internal Revenue, First Collection District, State of New York.

This cause coming regularly on for trial upon the demurrer filed July first, 1899, to the amended complaint filed June first, 1899, and after hearing George H. Pettit, Esq., United States attorney for the eastern district of New York, of counsel for defendant, in support of said demurrer, and Charles H. Otis, Esq., of counsel for the plaintiffs, in opposition thereto, and due deliberation having been had thereon, it is—

Ordered that the demurrer interposed by the defendant to the amended complaint in this action, as aforesaid, be, and the same is hereby, sustained; and it is further—

Ordered that the said amended complaint be, and the same is hereby, dismissed with costs to the defendant, to be adjusted in the general manner, and the clerk is hereby directed to enter judgment herein in accordance herewith.

EDWARD B. THOMAS, U. S. J.

Endorsed: Order. Filed and entered 17th day of July, 1899.

54 United States Circuit Court, Eastern District of New York.

EBEN J. KNOWLTON AND THOMAS A. BUFFUM, as
Executors of and under the Last Will and Testa-
ment of Edwin F. Knowlton, Deceased, Plain-
tiffs,

vs.

FRANK R. MOORE, as United States Collector of In-
ternal Revenue, First District, State of New York,
Defendant.

Action No. 1.

The issues in the above-entitled cause having been joined by the defendant filing a demurrer to the amended complaint on the first day of July, 1899, and an order having been entered by the Honourable Edward B. Thomas, district judge, holding the court, on the 17th day of July, 1899, directing that the said demurrer be sustained and dismissing the amended complaint with costs to the defendant, to be taxed, and directing entry of judgment for said costs, and the costs having been taxed by the clerk at the sum of thirteen and $\frac{1}{10}$ dollars (\$13.10)—

Now, on motion of George H. Pettit, Esq., United States attorney, appearing for defendant, it is—

Adjudged that the said demurrer filed in this action by the said defendant to the amended complaint of the plaintiffs herein be,
and is hereby, sustained, and that the said amended com-
plaint of the plaintiffs be, and is hereby, dismissed; and it
is further—

Adjudged that the above-named defendant recover of the above-named plaintiffs the sum of thirteen and $\frac{1}{10}$ dollars (\$13.10), his costs as taxed, and that judgment be docketed in favor of the said defendant and against the said plaintiffs therefor, and that execution be issued against the said plaintiffs on said judgment.

Dated Brooklyn, July 19th, 1899.

By the court:

(Signed) B. LINCOLN BENEDICT, Clerk.

Endorsed: Judgment. Filed and entered July 19, 1899.

56 Circuit Court of the United States, Eastern District of New York.

EBEN J. KNOWLTON AND THOMAS A. BUFFUM, }
Executors of and under the Last Will and }
Testament of Edwin F. Knowlton, De- }
ceased, Plaintiffs,

against

FRANK R. MOORE, as United States Collector }
of Internal Revenue, First Collection Dis- }
trict, State of New York, Defendant.

Plaintiffs' Petition for
Writ of Error.

And now come Eben J. Knowlton and Thomas A. Buffum, ex-
ecutors of the last will and testament of Edwin F. Knowlton, de-

ceased, and, conceiving themselves aggrieved by the judgment entered herein on the 19th day of July, 1899, do hereby pray that a writ of error be allowed from the said judgment returnable to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

And they present herewith their assignment of errors.

CHAS. H. OTIS,

*Attorney for Plaintiffs in Error, No. 189 Montague Street,
Borough of Brooklyn, City of New York, N. Y.*

And now, to wit, on July —, 1899, it is ordered that the writ of error be allowed as prayed for.

E. H. LACOMBE,
Circuit Judge.

57 Endorsed : Plaintiffs' petition for writ of error. Filed Aug. 7, 1899.

58 Supreme Court of the United States, October Term, 1899.

<p>EBEN J. KNOWLTON and THOMAS A. BUFFUM, Executors of and under the Last Will and Testament of Edwin F. Knowlton, Deceased, Plaintiffs in Error,</p> <p style="text-align: center;"><i>against</i></p> <p>FRANK R. MOORE, as United States Collector of Internal Revenue, First Collection District, State of New York, Defendant in Error.</p>	<p>Assignment of Errors.</p>
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Now come Eben J. Knowlton and Thomas A. Buffum, executors of and under the last will and testament of Edwin F. Knowlton, deceased, by their counsel, and respectfully represent that they feel themselves to be aggrieved by the proceedings and judgment of the circuit court of the United States for the eastern district of New York, in the second judicial circuit, in the above-entitled cause, and assign error thereto as follows:

I. The court erred in holding that sections twenty-nine and thirty of the act of Congress approved July thirteenth, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," which provided for the imposition, assessment, and collection of a tax on the personal property belonging to the estates of decedents when the same exceeded ten thousand dollars in value, were not enacted in violation of article 1, section 9, subdivision 4, of the Constitution of the United States, which provides that "no capitation or other direct tax shall be laid unless in proportion to the census or enumeration hereinbefore directed to be taken."

II. The court erred in holding that the taxes or duties imposed by the said sections twenty-nine and thirty were uniform throughout

the United States, and therefore were not enacted in violation of article I, section 8, subdivision 1, of the Constitution of the United States, which provides that the Congress shall have power "to lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defense and general welfare of the United States, but all duties, imposts, and excises shall be uniform throughout the United States."

III. The court erred in sustaining the demurrer to the amended complaint.

IV. The court erred in not overruling the demurrer to the amended complaint.

V. The court erred in dismissing the amended complaint and rendering judgment against the plaintiffs.

Wherefore the said Eben J. Knowlton and Thomas A. Buffum, executors of the last will and testament of Edwin F. Knowlton, deceased, plaintiffs in error, pray the honorable court to examine and correct the errors assigned and for a reversal of the judgment 60 of the circuit court of the United States, eastern district, State of New York, entered in the above-entitled cause.

By CHAS. H. OTIS,
Attorney for Plaintiffs in Error.

Endorsed: Assignment of errors. Filed Aug. 7, 1899.

61 Circuit Court of the United States, Eastern District of New York.

EBEN J. KNOWLTON and THOMAS A. BUFFUM, as Executors of
and under the Last Will and Testament of Edwin F. Knowlton,
Deceased, Plaintiffs, }
against
FRANK R. MOORE, as United States Collector of Internal Revenue,
First Collection District, State of New York, Defendant. }

Know all men by these presents that we, Eben J. Knowlton and Thomas A. Buffum, as executors of and under the last will and testament and codicil of Edwin F. Knowlton, deceased, as principals, and Charles A. Waterbury and Charles L. Hausmann, as sureties, are jointly and severally held and firmly bound unto the above-named Frank R. Moore, as collector of internal revenue, first collection district, State of New York, in the sum of five hundred dollars (\$500), lawful money of the United States of America, to be paid to the said Frank R. Moore, his executors or administrators; for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

The condition of the above obligation is such that—

Whereas the said Eben J. Knowlton and Thomas A. Buffum, as executors of and under the last will and testament and codicil of Edwin F. Knowlton, deceased, have sued out a writ of error from the Supreme Court of the United States to reverse a judgment rendered and entered by the circuit court of the United States for the eastern district of New York, in the second judicial circuit; which judgment was made and entered in the above-entitled action on the 19th day of July, in the year of our Lord one thousand eight hundred and ninety-nine:

Now, therefore, the condition of the above obligation is such that if the above-named plaintiffs in error herein shall prosecute said writ to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and effect.

EBEN J. KNOWLTON [L. S.]

As Executor, &c.

CHAS. A. WATERBURY. [L. S.]

CHARLES L. HAUSMANN. [L. S.]

THOS. A. BUFFUM, [L. S.]

As Executor, &c.

Acknowledged before me by the said Eben J. Knowlton, Charles A. Waterbury, and Charles L. Hausmann this 26th day of July, A. D. 1899.

B. LINCOLN BENEDICT,
U. S. Comm'r.

Acknowledged before me by the said Thomas A. Buffum this twenty-fourth day of July, A. D. 1899.

Witness:

FRANK F. DRESSER,
U. S. Com'r, Mass. District.

Approved, to operate as a supersedeas.

Circuit Judge.

63 UNITED STATES OF AMERICA, {
Eastern District of New York, } ss:

Charles A. Waterbury, being duly sworn, deposes and says that he is worth the sum of one thousand dollars over and above his just debts and liabilities.

CHAS. A. WATERBURY.

Sworn to before me this 26 day of July, A. D. 1899.

B. LINCOLN BENEDICT,
U. S. Com'r.

UNITED STATES OF AMERICA, }
Eastern District of New York, }
 ss:

Charles L. Hausmann, being duly sworn, deposes and says that he is worth the sum of one thousand dollars over and above his just debts and liabilities.

CHARLES L. HAUSMAN.

Sworn to before me this 26 day of July, A. D. 1899.

B. LINCOLN BENEDICT,
U. S. Com'r.

UNITED STATES OF AMERICA, }
Eastern District of New York, }
 ss:

Be it remembered that on this 26 day of July, in the year of our Lord one thousand eight hundred and ninety-nine, before me, the undersigned, personally came Eben J. Knowlton, Charles A. Waterbury, and Charles L. Hausmann, to me known and known to me to be three of the individuals described in and who executed the foregoing bond, and they severally acknowledged to me that they executed the same for the purposes therein mentioned.

64 In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

B. LINCOLN BENEDICT,
[L. S.] U. S. Com'r.

UNITED STATES OF AMERICA, }
District of Massachusetts, }
 ss:

Be it remembered that on this twenty-fourth day of July, in the year of our Lord one thousand eight hundred and ninety-nine, before me, the undersigned, personally came Thomas A. Buffum, to me known and known to me to be one of the individuals described in and who executed the foregoing bond, and acknowledged to me that he executed the same for the purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

FRANK F. DRESSER,
[L. S.] U. S. Commissioner, Mass. District.

Endorsed: Bond on writ of error approved to operate as a supersedeas. E. H. Lacombe, U. S. circuit judge. Filed Aug. 7, 1899.

65 UNITED STATES OF AMERICA, }
Eastern District of New York, }
 ss:

I, B. Lincoln Benedict, clerk of the circuit court of the United States of America for the eastern district of New York, do hereby certify that the foregoing annexed to this certificate is a true copy of the record and of all proceedings in the cause wherein Eben J. Knowlton and Thomas A. Buffum, as executors, &c., are plaintiffs

against Frank R. Moore, as collector, &c., defendant, on file and remaining of record in my office, made up to be transmitted on appeal to the Supreme Court of the United States.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 18th day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT, Clerk.

66 This is to certify that the within writ of error was served on the within-named Frank R. Moore, as United States collector of internal revenue, first collection district, State of New York, and on George H. Petit, United States attorney and attorney for said collector, on the 15th day of August, 1899, in their offices, in the United States court-house and post-office building, borough of Brooklyn, State of New York, by showing each of them this original and leaving with each of them a true copy thereof.

CHARLES J. HAUBERT.
U. S. Marshal, E. D. of N. Y.

67 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Eben J. Knowlton and Thomas A. Buffum, as executors of and under the last will and testament of Edwin F. Knowlton, deceased, plaintiffs in error, and Frank R. Moore, as United States collector of internal revenue, first collection district, State of New York, defendant in error, a manifest error hath happened, to the great damage of the said Eben J. Knowlton and Thomas A. Buffum, executors, &c., of Edwin F. Knowlton, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington within thirty days from the date hereof, — to be then and there held, that, the record and proceedings aforesaid 68 being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, the 7 day of August, in the year of our Lord one thousand eight hundred and ninety-nine.

[The Seal of the Circuit Court, Eastern District of New York.]

B. LINCOLN BENEDICT,
*Clerk of the U. S. Circuit Court for the Second
Circuit, Eastern District of New York.*

Allowed by—

E. H. LACOMBE,
U. S. Circuit Judge.

69 [Endorsed :] United States circuit court, eastern district of New York. Eben J. Knowlton and Thomas A. Buffum, as executors, &c., against Frank R. Moore, as collector, &c. Original. Writ of error.

70 This is to certify that the within citation was served on Frank R. Moore, as United States collector of internal revenue, first collection district, State of New York, and George H. Petit, Esq., United States attorney and attorney for said collector, on the 15th day of August, 1899, in *there* offices, in the U. S. court-house and post-office building, borough of Brooklyn, State of N. Y., by showing each of them this original and leaving with each of them a true copy thereof.

CHARLES J. HAUBERT,
U. S. Marshal, E. D. of N. Y.

71 By the Honorable E. Henry Lacombe, one of the judges of the circuit court of the United States for the eastern district of New York, in the second *district*.

To Frank R. Moore, as United States collector of internal revenue, first collection district, State of New York, and George H. Pettit, Esq., United States attorney and attorney for said collector, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of New York, wherein Eben J. Knowlton and Thomas A. Buffum, as executors of and under the last will and testament of Edwin F. Knowlton, deceased, were plaintiffs and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, in the city of New York, in the district above named, this 7th day of August, A. D. 1899, and of the Independence of the United States the one hundred and twenty-fourth.

E. H. LACOMBE,
United States Circuit Judge, Second Circuit.

72 [Endorsed :] United States circuit court, eastern district of New York. Eben J. Knowlton and Thomas A. Buffum, as executors, &c., against Frank R. Moore, as collector, &c. Original. Citation.

73 [Endorsed :] Supreme Court of the United States. Eben J. Knowlton and Thomas A. Buffum, as executors, &c., plaintiffs in error, *vs.* Frank R. Moore, as U. S. collector, &c., defendant. Transcript of record, &c., on writ of error to the circuit court for the eastern district of New York.

Endorsed on cover: File No. 17,501. E. New York C. C. U. S. Term No., 387. Eben J. Knowlton and Thomas A. Buffum, executors of the last will & testament of Edwin F. Knowlton, deceased, plaintiffs in error, *vs.* Frank R. Moore, United States collector of internal revenue, first collection district, State of New York. Filed August 30th, 1899.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. ~~224~~ 225.

SHIRLEY T. HIGH AND JESSIE M. HIGH, APPELLANTS,

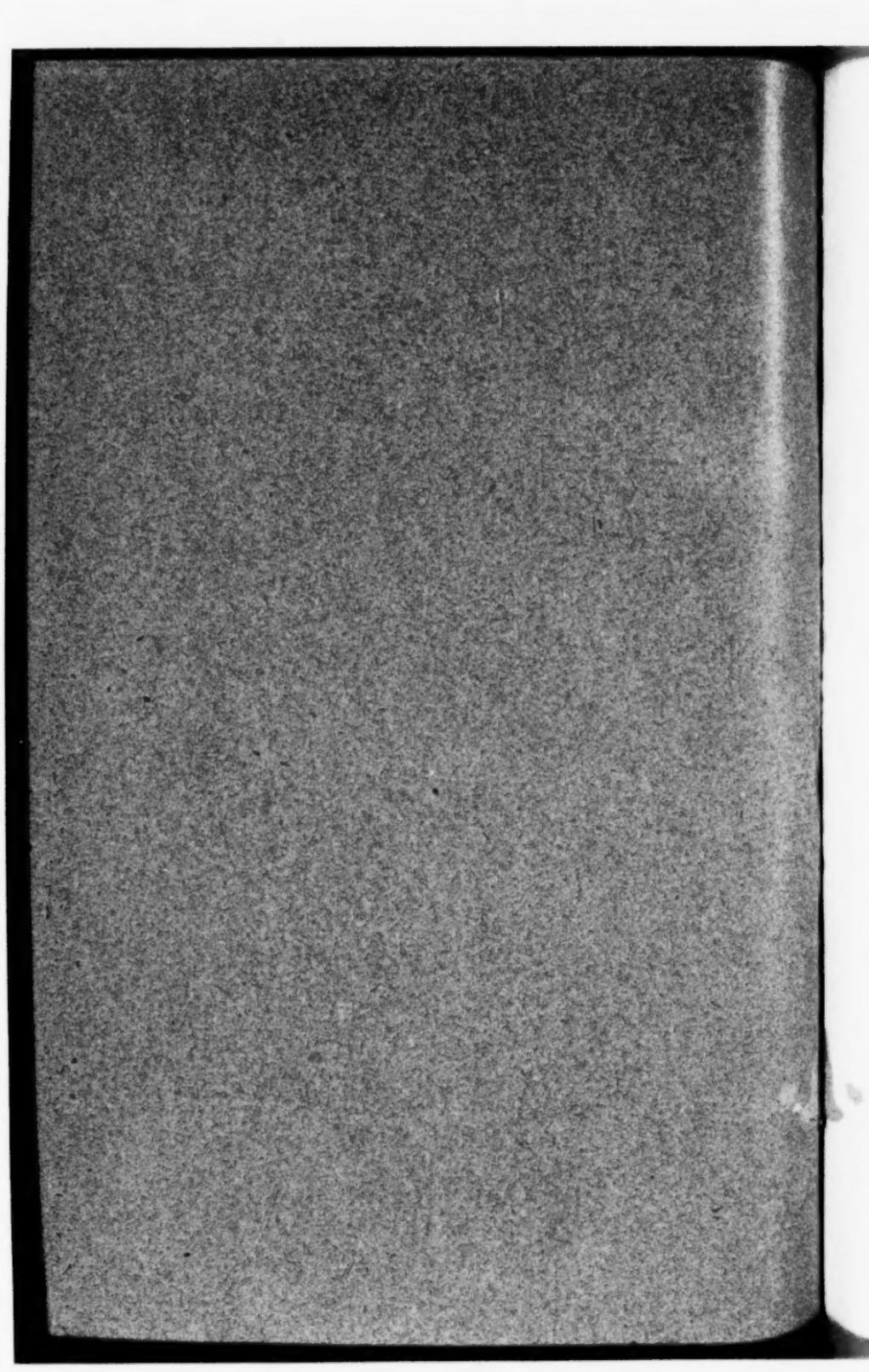
v.

F. E. COYNE, AS COLLECTOR OF UNITED STATES INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, AND ELLEN T. HIGH, AS EXECUTRIX OF JAMES L. HIGH, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED MARCH 4, 1890.

(17,314.)



(17,314.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 729.

SHIRLEY T. HIGH AND JESSIE M. HIGH, APPELLANTS,

vs.

F. E. COYNE, AS COLLECTOR OF UNITED STATES INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, AND ELLEN T. HIGH, AS EXECUTRIX OF JAMES L. HIGH, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

Original. Print.

Caption	1	1
Bill of complaint	2	1
Order setting cause for hearing on demurrer.....	15	8
Demurrer of Ellen T. High, executrix, &c.. .	17	8
Demurrer of Frederick E. Coyne, collector, &c.....	19	9
Opinion.....	21	10
Decree.....	25	12
Petition for appeal	26	12
Assignment of errors	26	12
Appeal bond.....	32	16
Order allowing appeal	34	16
Order approving bond to operate as supersedesas.....	35	17
Order correcting record.....	35	17
Clerk's certificate	36	17
Citation.....	37	18
Proof of service of citation.....	38	18



1 Pleas in the circuit court of the United States for the northern district of Illinois, northern division, in chancery sitting, at the United States court-room, in the city of Chicago, in said district and division, before the Hon. William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, on Tuesday, the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine, being one of the regular days of the December term of said court, 1898, and of our Independence the one hundred and twenty-third year.

S. W. BURNHAM, Clerk.

SHIRLEY T. HIGH and JESSIE M. HIGH

v/s.

FREDERICK E. COYNE, as Collector of United States Internal Revenue for the First District of Illinois, and Ellen T. High, as Executrix of the Last Will and Testament of James L. High.]

25091.

Be it remembered that on this day, to wit, the fourteenth day of February, 1899, came the complainants in said entitled cause, by their solicitors, and filed in the clerk's office of said court their bill of complaint; which said bill of complaint is in the words and figures following, to wit:

2 In the Circuit Court of the United States, Northern District of Illinois, Northern Division. In Chancery.

To the honorable the judges of said court, in chancery sitting:

Your orators, Shirley T. High and Jessie M. High, bring this their bill of complaint against Frederick E. Coyne, as collector of United States internal revenue for the first district of Illinois, and against Ellen T. High, as executrix of the last will and testament of James L. High, deceased, and thereupon your orators show here to the court as follows:

That heretofore and on the third day of October, A. D. 1898, James L. High, the father of your orators, late of the city of Chicago, county of Cook and State of Illinois, died at said city of Chicago, leaving his last will and testament, which said will was duly proved and admitted to probate and record in the probate court of said Cook county on the twenty-eighth day of October, A. D. 1898; that in and by said last will the defendant Ellen T. High is named as sole executrix thereof; that thereafter and on the thirty-first day of October, A. D. 1898, letters testamentary thereunder were issued to her out of said probate court authorizing and empowering her to act as such executrix thereof; that she thereupon qualified as such executrix and entered upon and ever since has been and still

3 is engaged in the performance of her duties as such executrix

Your orators further allege that in and by said last will and testament the said James L. High devised and bequeathed all his property, real and personal, in equal shares to his wife, the said de-

fendant, Ellen T. High, and to your orators, Shirley T. High and Jessie M. High, such provision for said Ellen T. High being in lieu of dower and all other interest in said property.

Your orators further show unto the court that they are citizens of the State of Illinois, & that under and by virtue of said last will and testament they have become and are now seized in fee-simple each of an undivided one-third interest in the following-described real estate situated in said county of Cook and State of Illinois, to wit:

The west twenty-six feet (26 ft.) of the south one hundred feet (100 ft.) of lot number six (6), in block number one hundred and twenty (120), in the School Section addition to Chicago, said premises being otherwise known as lot number nineteen (19) in county clerk's division of block number one hundred and twenty (120) in the School Section addition to Chicago.

Lot fourteen (14), in block five (5), in George Smith's addition to Chicago, said addition being a subdivision of blocks seventeen (17) to twenty-two (22), inclusive, in the assessor's division of the southwest fractional quarter of section twenty-two (22), township thirty-nine (39) north, range fourteen (14) east, of the third principal meridian.

4 The northeasterly one hundred and fifty feet (150 ft.) of block number fifteen (15) and all of block number sixteen (16) of Taylorsport, in the village of Glencoe.

Also that part of the southeast quarter of section number eight (8), township forty-two (42) north, range thirteen (13) east, of the third principal meridian, in the village of Winnetka, which lies north of the center line of Wentworth street extended easterly to Lake Michigan and south to a line extended easterly to Lake Michigan, and lying one hundred and eighty-four and twenty-four one-hundredths feet (184.24 ft.) north of and parallel to the north line of said Wentworth street.

Lots thirty-nine (39) to forty-two (42), inclusive, in Campbell's re-subdivision of block twelve (12), in the east half of the northeast quarter of the northwest quarter of section nine (9), in township thirty-nine (39) north, range thirteen (13) east, of the third principal meridian.

All of said described property being situated in the county of Cook and State of Illinois.

Your orators further allege that they are in full and undisputed possession of all of said above described real estate.

Your orators further show unto the court that the said James L. High left a large amount of personal property, both corporeal and incorporeal, consisting of stocks, bonds, and other choses in action;

5 also household furniture and effects of every sort and description, said personal property being valued at two hundred and fifteen thousand dollars and upward over and above all debts and obligations of said estate.

Your orators further allege that by an act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898, it was provided, among other things, as follows:

"Legacies and Distributive Shares of Personal Property."

SEC. 20. That any person or persons having in charge or trust, as administrators, executors, or trustees, any legacies or distributive shares arising from personal property, where the whole amount of such personal property as aforesaid shall exceed the sum of ten thousand dollars in actual value, passing, after the passage of this act, from any person possessed of such property, either by will or by the interstate laws of any State or Territory, or any personal property or interest therein, transferred by deed, grant, bargain, sale, or gift, made or intended to take effect in possession or enjoyment after the death of the grantor or bargainer, to any person or persons, or to any body or bodies, politic or corporate, in trust or otherwise, shall be, and hereby are, made subject to duty or tax, to be paid to the United States, as follows—that is to say: Where the whole amount of said personal property shall exceed in value ten thousand and shall not exceed in value the sum of twenty-five thousand dollars the tax shall be:

First. Where the person or persons entitled to any beneficial interest in such property shall be the lineal issue or lineal ancestor, brother, or sister to the person who died possessed of such property, as aforesaid, at the rate of seventy-five cents for each and every hundred dollars of the clear value of such interest in such property.

Second. Where the person or persons entitled to any beneficial interest in such property shall be the descendant of a brother or sister of the person who died possessed, as aforesaid, at the rate of one dollar and fifty cents for each and every hundred dollars of the clear value of such interest.

Third. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the father or mother, or a descendant of a brother or sister of the father or mother, of the person who died possessed as aforesaid, at the rate of three dollars for each and every hundred dollars of the clear value of such interest.

Fourth. Where the person or persons entitled to any beneficial interest in such property shall be the brother or sister of the grandfather or grandmother, or a descendant of the brother or sister of the grandfather or grandmother, of the person who died possessed as aforesaid, at the rate of four dollars for each and every hundred dollars of the clear value of such interest.

Fifth. Where the person or persons entitled to any beneficial interest in such property shall be in any other degree of a collateral consanguinity than is hereinbefore stated, or shall be a stranger in blood to the person who died possessed, as aforesaid, or shall be a body politic or corporate, at the rate of five dollars for each and every hundred dollars of the clear value of such interest: Provided, that all legacies or property passing by will, or by the laws of any State or Territory, to husband or wife of the

person died possessed, as aforesaid, shall be exempt from tax or duty.

Where the amount or value of said property shall exceed the sum of twenty-five thousand dollars, but shall not exceed the sum or value of one hundred thousand dollars, the rates of duty or tax above set forth shall be multiplied by one and one-half; and where the amount or value of said property shall exceed the sum of one hundred thousand dollars, but shall not exceed the sum of five hundred thousand dollars, such rates of duty shall be multiplied by two; and where the amount or value of said property shall exceed the sum of five hundred thousand dollars but shall not exceed the sum of one million dollars, such rates of duty shall be multiplied by two and one-half; and where the amount or value of said property shall exceed the sum of one million dollars, such rates of duty shall be multiplied by three.

Sec. 30. That the tax or duty aforesaid shall be a lien and charge upon the property of every person who may die as aforesaid for twenty years, or until the same shall, within that period, be fully paid to and discharged by the United States; and every executor, administrator or trustee, before payment and distribution to the legatees, or any parties entitled to beneficial interest therein, shall

pay to the collector or deputy collector of the district of
8 which the deceased person was a resident the amount of the

duty or tax assessed upon such legacy or distributive share, and shall also make and render to the said collector or deputy collector, a schedule, list, or statement, in duplicate, of the amount of such legacy or distributive share, together with the amount of duty which has accrued, or shall accrue thereon, verified by his oath or affirmation, to be administered and certified thereon by some magistrate or officer having lawful power to administer such oaths, in such form and manner as may be prescribed by the Commissioner of Internal Revenue, which schedule, list, or statement shall contain the names of each and every person entitled to any beneficial interest therein, together with the clear value of such interest, the duplicate of which schedule, list, or statement shall be by him immediately delivered, and the tax thereon paid to such collector, and upon such payment and delivery of such schedule, list, or statement said collector or deputy collector shall grant to such person paying such duty or tax a receipt or receipts for the same in duplicate, which shall be prepared as hereinafter provided. Such receipt or receipts, duly signed and delivered by such collector or deputy collector, shall be sufficient evidence to entitle such executor, administrator, or trustee to be credited and allowed such payment by every tribunal which, by the laws of any State or Territory, is, or may be, empowered to decide upon and settle the accounts of executors and administrators. And in case such executor, administrator or trustee shall

refuse or neglect to pay the aforesaid duty or tax to the collector
9 or deputy collector, as aforesaid, within the time hereinbefore

provided, or shall neglect or refuse to deliver to said collector or deputy collector the duplicate of the schedule, list or statement of such legacies, property or personal estate, under oath, as

aforesaid, or shall neglect or refuse to deliver the schedule, list, or statement of such legacies, property, or personal estate, under oath as aforesaid, or shall deliver to said collector or deputy collector a false schedule or statement of such legacies, property, or personal estate, or give the names and relationship of the persons entitled to beneficial interests therein untruly, or shall not truly and correctly set forth and state therein the clear value of such beneficial interest, or where no administration upon such property or personal estate shall have been granted or allowed under existing laws, the collector or deputy collector shall make out such lists and valuation as in other cases of neglect or refusal, and shall assess the duty thereon; and the collector shall commence appropriate proceedings before any court of the United States, in the name of the United States, against such person or persons as may have the actual or constructive custody or possession of such property or personal estate or any part thereof, and shall subject such property or personal estate, or any portion of the same, to be sold upon the judgment or decree of such court, and from the proceeds of such sale the amount of such tax or duty, together with all costs and expenses of every description to be allowed by such court, shall be first paid, and the balance, if any, deposited according to the order of such court, to be paid under its direction to such person or persons as shall establish title to the same. The deed or deeds, or any proper conveyance of such property or personal estate, or any portion thereof, so sold
10 undersuch judgment or decree, executed by the officer lawfully charged with carrying the same into effect, shall vest in the purchaser thereof all the title of the delinquent to the property or personal estate, sold under and by virtue of such judgment or decree, and shall release every other portion of such property or personal estate from the lien or charge thereon created by this act. And every person or persons who shall have in his possession, charge or custody any record, file, or paper containing, or supposed to contain, any information concerning such property or personal estate, as aforesaid, passing from any person who may die, as aforesaid, shall exhibit the same at the request of the collector or deputy collector of the district, and to any law officer of the United States, in the performance of his duty under this act, his deputy or agent, who may desire to examine the same. And if any such person, having in his possession, charge, or custody any such records, files, or papers, shall refuse or neglect to exhibit the same on request as aforesaid, he shall forfeit and pay the sum of five hundred dollars: Provided, that in all legal controversies where such deed or title shall be the subject of judicial investigation, the recital in said deed shall be *prima facie* evidence of its truth, and that the requirements of the law have been complied with by the officers of the Government.

SEC. 31. That all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed are hereby made applicable to this act."

Your orators allege that said act has never been repealed.

11 Your orators further show unto the court that under and by virtue of the alleged authority of said act the said defendant, Frederick E. Coyne, as such collector, as aforesaid, has made a demand in writing upon said defendant, Ellen T. High, requiring and compelling her to make and return to said collector a schedule or statement of the legacies and distributive shares of said estate so held by her as such executrix, stating the names of all persons entitled to any beneficial interest therein and giving the amount of said alleged tax that has accrued and is due thereon; that said collector is threatening, in case said Ellen T. High fails or refuses to make and return such schedule or statement, as aforesaid, that he will make out such list and valuation himself and will assess the tax thereon, and, moreover, that he will commence proceedings in the name of the United States against said executrix as being the person who has such personal property in her actual and constructive possession, and will subject the same to be sold by a decree of court, and that from the proceeds of such sale he will collect the amount of such alleged tax or duty, together with all costs and expenses of such proceeding.

Your orators further allege that said executrix states and gives out that she intends as such executrix to make and return to said collector such schedule or statement of the legacies and distributive shares of said estate so held by her as such executrix, together with the amount of the tax alleged to be due thereon, and threatens and intends and will, unless restrained by an order of this
12 court, pay the amount of said alleged tax to said collector in pursuance of such notice and demand.

Your orators further allege that by the terms and provisions of said act it is provided that such alleged tax or duty shall be a lien or charge for twenty years upon all the property left by any deceased person, where the personal estate left by such decedent is by said act made subject to such tax or duty, unless the same be before that time fully paid and discharged.

Your orators allege that by reason of the terms and language of such provision said tax has become and now is a lien or charge upon the real estate so held by your orators, as aforesaid; that it is a cloud or encumbrance upon their title thereto and interferes with the sale and disposition thereof.

Your orators further represent unto the court that the provisions of said act, as hereinbefore set forth, are unconstitutional, null, and void, in that such tax, being a direct tax in respect of the property upon which said tax is by said act directed to be assessed, is not in and by said act apportioned among the several States, as required by sections 2 and 9 of article I of the Constitution of the United States; that said tax, if not a direct tax, is nevertheless unconstitutional, null, and void, in that it is not uniform throughout the United States; in that said act is an unwarranted interference by
13 the Congress of the United States with the powers and rights of the several States to exercise exclusive control in all matters pertaining to the control and regulation of the devise and descent of property; in that it is an unauthorized assumption

by Congress of powers not conferred upon it by the Constitution of the United States.

Your orators further allege that the threatened action of said collector in making out such lists and valuation, as aforesaid, in case of the failure or refusal of said executrix so to do, and in assessing said tax thereon, and in commencing suit in the name of the United States against said executrix, and in subjecting such property and personal estate to be sold upon a decree of court for the payment of said tax, and said threatened act of said executrix will result in great and irreparable loss and injury to complainants, for which they would and could have no adequate or proper remedy in a court of law.

Forasmuch, therefore, as your orators are without remedy in the premises except in a court of equity, your orators bring this their bill of complaint, and pray that the said Frederick E. Coyne, as collector of United States internal revenue for the first district of Illinois, and Ellen T. High, as executrix of the last will and testament of James L. High, deceased, be made parties defendant to this their bill of complaint; that they and each of them be required to make full, true, direct, and perfect answer unto this bill, but not under oath, their respective answers under oath being hereby expressly waived; that said provisions of said act, as hereinbefore set forth, be declared by this honorable court to be unconstitutional,

14 null, and void, and that the title of your orators to the real estate hereinbefore described be decreed to be free and clear of the lien or charge imposed by said alleged act and from the cloud and encumbrance thereby created; that the defendant Ellen T. High be perpetually enjoined from making or returning to said collector a schedule or statement of said legacies and distributive shares of personal property so held by her as such executrix and from paying such alleged tax thereon; that said Frederick E. Coyne, as such collector, be perpetually enjoined and restrained from collecting or attempting to collect such tax or from commencing any proceeding in any court for the purpose of compelling payment of the same and from doing or committing any of the acts and things so threatened to be done by said collector, as aforesaid, and for such other and further relief as the nature of the case may require and to equity may seem meet.

May it please your honors to grant unto your orators the writ of subpœna issuing out of and under the seal of this honorable court, directed to the proper officer, commanding him that he summon the said defendants, Frederick E. Coyne, as such collector, and Ellen T. High, as such executrix, to appear before this court on the first day of the next term thereof, then and there to answer all and singular the premises and to stand and abide by all orders or decrees that may be entered herein.

And your orators will ever pray, etc.

SHIRLEY T. HIGH.
JESSIE M. HIGH.

PENCE, CARPENTER & HIGH,

Solicitors and of Counsel.

(Endorsed:) Filed February 14, 1899. S. W. Burnham, cl'k.

15 And on the fifteenth day of February, 1899, in the December term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Hon. William H. Seaman, district judge, appears the following entry, to wit:

Order of February 15, 1899.

SHIRLEY T. HIGH ET AL.	vs.	} 25091.
FREDERICK E. COYNE ET AL.		

It is ordered by the court that this cause be set down for hearing on demurrer to the bill on February 24, 1899, at two p. m.

16 Afterwards, to wit, on the sixteenth day of February, 1899, came Ellen T. High, as executrix of the last will and testament of James L. High, by her solicitors, and filed in the clerk's office of said court her demurrer to the bill of complaint in said cause; which said demurrer is in the words and figures following, to wit:

17 UNITED STATES OF AMERICA,
Northern District of Illinois, Northern Division. }

In the Circuit Court of the United States. In Chancery.

SHIRLEY T. HIGH ET AL.	vs.	} No. 25091.
FREDERICK E. COYNE, Collector, ET AL.		

The demurrer of Ellen T. High, as executrix of the last will and testament of James L. High, deceased, to the bill of complaint of Shirley T. High and Jessie M. High, complainants.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said bill of complaint contained to be true in manner and form as the same are therein set forth, demurs to said bill, and for cause of demurrer shows to the court:

That complainants have not in and by their said bill of complaint made or stated any such case as entitles them to any discovery or relief in equity or to any relief whatsoever against this defendant touching the matters in said bill of complaint contained or any of such matters.

Wherefore, and for divers other good causes of demurrer appearing on the face of said bill of complaint, this defendant demurs to said bill and prays the judgment of this honorable court whether this defendant shall be compelled to make any other or further answer to said bill, and prays to be hence dismissed with her reasonable costs in this behalf sustained.

JOHN F. HOLLAND,
Solicitor for Ellen T. High, Defendant.

18 I certify that, in my opinion, the foregoing demurrer of the defendant Ellen T. High to the bill of complaint of Shirley T. High and Jessie M. High is well founded in law and proper to be filed in the above cause.

JOHN F. HOLLAND,
Solicitor for Defendant Ellen T. High.

STATE OF ILLINOIS, } ss :
Cook County,

Ellen T. High, being duly sworn, says she is one of the defendants in the above-entitled cause; that she has read the foregoing demurrer to the bill of complaint therein, and that the same is not interposed for the purpose of delaying said suit or any proceedings therein.

ELLEN T. HIGH.

Subscribed and sworn before me this — day of February, A. D. 1899.

[SEAL.]

CHARLES G. LITTLE,
Notary Public.

(Endorsed:) Filed February 16, 1899. S. W. Burnham, cl'k.

19 And on the twenty-fourth day of February, 1899, came Frederick E. Coyne, as collector of United States internal revenue for the first district of Illinois, and filed in the clerk's — of said court his demurrer in said cause; which said demurrer is in words and figures following, to wit:

Demurrer.

In the Circuit Court of the United States, Northern District of Illinois, Northern Division. In Chancery.

SHIRLEY T. HIGH ET AL.
vs.

FREDERICK E. COYNE, Collector, etc.

} Demurrer to Bill.

The demurrer of Frederick E. Coyne, as collector of United States internal revenue for the first district of Illinois, to the bill of complaint of Shirley T. High *et al.*, the above-named complainants.

This defendant, by protestation, not confessing any or all of the matters and things in the complainants' bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, doth demur to said bill, and for cause of demurrer sheweth that the complainants hath not in and for their said bill made or stated such a case as entitles them in a court of equity to any discovery from this defendant or of any relief against him as to the matters contained in the said bill or any of such matters.

Wherefore, and for divers other good causes of demurrer appear-

ing in the said bill, this defendant doth demur thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

S. H. BETHEA,
Attorney for the United States, for the said Defendant.

(Endorsed :) Filed Feb. 24, 1899. S. S. Burnham, clerk.

20 Afterwards, to wit, on the twenty-eighth day of February, 1899, there was filed in the clerk's office of said court an opinion by Judge Seaman; which said opinion is in the words and figures following, to wit:

21

Opinion.

HIGH	{
vs.	
COYNE.	}

On demurrer to bill of complaint.

SEAMAN, Judge:

The bill is filed to enjoin the imposition of the succession tax or duty which is provided by sections 29, 30, and 31 of the act of Congress approved June 13, 1898, and is predicated solely upon the alleged unconstitutionality of these provisions. The contention is that the tax or duty is opposed to the Constitution upon the following grounds: (1) That it constitutes a direct tax upon the legacies in question, both in effect and by the express terms of the act; (2) that it is not uniform for the reason that it exempts from its operation all legacies under the value of \$10,000; and (3) that the right of inheritance is a privilege or franchise within the exclusive power of the States to grant and regulate and not subject to abridgement or taxation by the General Government. Unless one or the other of these propositions can be upheld, it is manifest that the bill states no ground for relief and the demurrer must be sustained. The questions are interesting, and the ability and thoroughness with which they have been presented would justify a review of the authorities cited and an extended statement of the grounds upon which my conclusions are based, aside from the doctrine of *stare decisis*; but, with the pressure of other duties and the belief that there will be a review by the Supreme Court, I am satisfied that an early decision is more desirable for the parties than an opinion which would necessarily call for delay.

It is the duty of the courts to sustain all enactments by the legislative branch of the Government, either national or State, unless they clearly transcend the law-making power, and no such enactment must be held for nought because of doubt or for any reason short of absolute conviction. Another rule must be

premised as controlling the circuit courts at least; that individual convictions must yield when the constitutionality has been determined by the court of final resort in a case which is applicable.

I have examined with care the line of decisions by the Supreme Court upon questions of taxation in which the constitutional provisions involved in this case were interpreted, and my conclusions, briefly stated, are as follows:

1. Prior to the income-tax decisions in the Pollock cases (157 and 158 U. S.) the opinions of the Supreme Court tended to narrow the definition of direct taxes, which were inhibited by the Constitution to capitation or poll taxes and taxes on land. By the Pollock case that definition was extended to include personality and incomes derived from investment in real estate or personal property. It is unnecessary to review the definitions which are there considered, as it seems manifest that the prevailing opinion by the Chief Justice carefully preserves the distinction theretofore held to authorize the duty or tax which is in question here as one upon the privilege of succession or upon devolution of property of the nature of excise. Certainly the decision in *Scholey v. Rew*, 23 Wall., 331, by which a provision was sustained quite identical in terms, so far as material to this point, was neither overruled nor questioned in the Pollock decision, but it stands unimpaired as a rule of decision which

must govern this court, notwithstanding the reference in the
23 opinion to the former income tax as of analogous nature.

The view thus indicated of the distinction in an inheritance or succession tax is well fortified by the opinion in *United States v. Perkins*, 163 U. S., 625, which sustains a tax of that species charged under a statute of the State of New York against a legacy in favor of the United States bequeathed by a citizen of that State. As there held, "The tax is not upon the property, in the ordinary sense of the term, but upon the right to dispose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee." So in *Magoun v. Ill. Trust & Savings Bank*, 170 U. S., 283, the same interpretation is upheld.

2. As an original question, the objection of want of uniformity through the important exemption feature of this statute would impress me as one of great force; but in consideration of the fact that the same question was directly presented in the income-tax cases and was left undecided because of an equal division of the members of the court, and in the light of rulings under State statutes where the objection would seem to be equally open under certain of their constitutions, I am unable to hold that the provision is undoubtedly beyond the power of Congress.

3. Upon the last proposition I cannot regard the duty as an interference with the rights of the States, although the doctrine frequently pronounced that the right to tax is the right to destroy lends plausibility to the contention here.

I am therefore of opinion that the demurrer must be sustained upon authority.

(Endorsed:) Filed February 28, 1899. S. W. Burnham, clerk.

24 On the same day, to wit, the twenty-eighth day of February, 1899, in the December term of said court, 1898, in the record of proceedings thereof in said entitled cause before the Hon. William H. Seaman, district judge, appears the following entry, to wit:

25

Order.

Circuit Court of the United States, Northern District of Illinois,
Northern Division.

TUESDAY, February 28, 1899.

Present: Hon. William H. Seaman, district judge.

SHIRLEY T. HIGH and JESSIE M. HIGH

vs.

FREDERICK E. COYNE, as Collector of the United States
Revenue for the First District of Illinois, and Ellen T.
High, as Executrix of the Last Will and Testament of
James L. High, Deceased.

} 25091.

Now come the parties, by their solicitors, and the court, having considered and being now fully advised, sustains the demurrs to the bill, and the complainants in open court, by their solicitors, elect to abide by their bill.

It is thereupon ordered by the court that the bill of complaint be, and the same is hereby, dismissed for want of equity at the complainants' costs, and that execution issue therefor.

The bond on appeal is fixed at the sum of three thousand dollars, to be approved by the court; which bond when approved and filed shall operate as a supersedeas.

26 And on the first day of March, 1899, came the complainants in said entitled cause, by their solicitors, and filed in the clerk's office of said court their petition for appeal and assignment of errors; which said petition for appeal and assignment of errors are in words and figures following, to wit:

Petition for Appeal and Assignment of Errors.

UNITED STATES OF AMERICA,
Northern Division of the Northern District of Illinois, } ss:

In the Circuit Court of the United States.

SHIRLEY T. HIGH ET AL. }
vs. } In Chancery.
FREDERICK E. COYNE ET AL. }

Petition for appeal and assignment of errors.

And now come the complainants, Shirley T. High and Jessie M. High, by Pence, Carpenter & High, their solicitors, and pray an

appeal to the Supreme Court of the United States from the decree and order of his honor Judge W. H. Seaman dismissing the bill of complaint herein for want of equity, entered on the twenty-eighth day of February, A. D. 1899, and assign the following errors and reasons for appeal:

1st. That the circuit court erred in dismissing the said bill of complaint.

2nd. That the circuit court erred in holding that the act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, A. D. 27 1898, is valid in so far as it provides for the taxing of legacies and distributive shares of personal property in sections 29, 30, and 31, inclusive.

3rd. That the circuit court erred in not deciding that the Congress of the United States by said act, in so far as it relates in sections 29, 30, and 31 to legacies and distributive shares of personal property, deprived the complainants of their property without due process of law.

4th. That the circuit court erred in deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is uniform and affords the equal protection of the laws to persons throughout the jurisdiction of the United States.

5th. That the circuit court erred in deciding that the Congress of the United States by said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, has not denied and does not deny to persons throughout the United States and within the jurisdiction of the United States the equal protection of the laws.

6th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, denies to the said complainants, who are citizens of the United States, the equal protection of the laws.

7th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, abridges, interferes with, and controls the privileges of the complainants, who are citizens of the United States and of the State of Illinois, which said privileges are guaranteed to said complainants by the said State of Illinois.

8th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, abridges the immunities of the complainants, who are citizens of the United States and of the State of Illinois.

9th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is repugnant to, in conflict with, and in violation of the provisions of sections 2 and 9 of article 1 of the Constitution of the United States.

10th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is repugnant to, in conflict with, and in violation of the provision of the fourteenth article of amendment to the Constitution of the United States of America.

11th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is the exercise by Congress or the attempted exercise by Congress of a power not conferred upon it by the Constitution of the United States.

12th. That the circuit court — in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is an unwarranted interference by Congress with the substantive powers of the several States and of the State of Illinois to regulate and control the devise and descent of property within said States and within the State of Illinois.

29 13th. That the circuit court erred in not deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is a direct tax, and as such was not levied in accordance with section 2 of article 1 of the Constitution of the United States.

14th. That the circuit court erred in not holding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, was not levied in accordance with section 9 of article 1 of the Constitution of the United States.

15th. That the circuit court erred in not holding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is not uniform, as required by section 8 of article 1 of the Constitution of the United States.

16th. The circuit court erred in not holding that the right to control or regulate the devise and descent of property is vested alone in the several States, and that the Congress of the United States has no right or power to regulate, control, or abridge the devise or descent of property within the several States and within the State of Illinois.

17th. That the circuit court erred in not deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is an attempt by the Congress of the United States to regulate, control, or abridge the right of inheritance of property which has been guaranteed to the complainants by the State of Illinois, and which attempted act is prohibited by the Constitution of the United States.

30 18th. The circuit court erred in deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, was not a direct tax.

19th. The circuit court erred in deciding that said act, in so far

as it relates to legacies and distributive shares of property, and in sections 29, 30, and 31, is not repugnant to, in conflict with, and prohibited by section 2 of article 1 of the Constitution of the United States.

20th. The circuit court erred in deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is not repugnant to, in conflict with, and in violation of section 9 of article 1 of the Constitution of the United States.

21st. The circuit court erred in deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is not repugnant to, in conflict with, and in violation of section 8 of article 1 of the Constitution of the United States.

22nd. The circuit court erred in deciding that said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, was not repugnant to, in conflict with, and in violation of the provision of the fourteenth article of amendment to the Constitution of the United States.

23rd. The circuit court erred in deciding that it was within the power of Congress to levy a succession tax which was not apportioned among the several States in accordance with section 2 of article 1 of the Constitution of the United States.

24th. That the circuit court erred in not granting the relief prayed for in said bill of complaint.

31 25th. That the circuit court erred in not deciding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is in conflict with and in violation of other provisions of the Constitution of the United States.

26th. That the circuit court erred in that said decree dismissing said bill of complaint for want of equity is contrary to the law, and that the action of the court in sustaining the demurrers to said bill was unwarranted, because such action of the court was based upon an act of Congress which is repugnant to, in conflict with, and in violation of the provisions of the Constitution of the United States.

27th. That the circuit court erred in holding that the said act, in so far as it relates to legacies and distributive shares of personal property, and in sections 29, 30, and 31, is a tax upon the right or privilege of inheritance and not a tax upon the property inherited itself.

PENCE, CARPENTER & HIGH,
Sol'rs for Complainants.
SHIRLEY T. HIGH.
JESSIE M. HIGH.

(Endorsed :) Filed Mar. 1, 1899. S. W. Burnham, clerk.

32 On the same day, to wit, the first day of March, 1899, came the complainants in said entitled cause, as principals, and Henry Borsch, as surety, and filed in the clerk's office of said court

a certain appeal bond; which said appeal bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Shirley T. High and Jessie M. High, as principals, and Henry Borsch, as surety, are held and firmly bound unto F. E. Coyne, as collector of United States internal revenue for the first district of Illinois, and unto Ellen T. High, as executrix of and under the last will and testament of James L. High, deceased, in the full and just sum of three thousand dollars (\$3,000.00), to be paid to the said F. E. Coyne and to the said Ellen T. High, their successors and certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this twenty-eighth day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term of the circuit court of the United States in and for the northern district of Illinois, northern division, in a suit depending in said court between the said Shirley T. High and the said Jessie M. High, as complainants, and the said F. E. Coyne and the said Ellen T. High, as defendants, a decree was rendered against the said Shirley T. High and the said Jessie M. High, and the said Shirley T. High and the said Jessie M. High having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said F. E. Coyne and the said Ellen

33 T. High, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Shirley T. High and the said Jessie M. High shall prosecute said appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

SHIRLEY T. HIGH. [SEAL.]
JESSIE M. HIGH, [SEAL.]
By S. T. HIGH, *Her Atty-in-fact.*
HENRY BORSCH. [SEAL.]

Approved as a supersedeas bond.

WM. H. SEAMAN, *Judge.*

(Endorsed:) Filed March 1, 1899. S. W. Burnham, clerk.

34 On the same day, to wit, the first day of March, 1899, in the December term of said court, 1898, in the record of proceedings thereof in said entitled cause, before the Honorable William H. Seaman, district judge, appears the following entry, to wit:

SHIRLEY T. HIGH and JESSIE M. HIGH

vs.

FREDERICK E. COYNE, as Collector of the United States Internal Revenue for the First District of Illinois, and Ellen T. High, as Executrix of the Last Will and Testament of James L. High.

25091.

Now comes the said complainants, by their solicitors, and present to the court their petition for appeal to the Supreme Court of the United States from the decree and order entered herein on the 28th day of February, A. D. 1899, dismissing their said bill of complaint, and also present and file their assignments of error. The court now, being fully advised in the premises, doth order that said appeal be, and the same is hereby, granted and allowed to the Supreme Court of the United States.

35 On the same day, to wit, the first day of March, 1899, in the December term of said court, 1898, in the record and proceedings thereof in said entitled cause, before the Hon. William H. Seaman, district judge, appears the following entry, to wit:

SHIRLEY T. HIGH and JESSIE M. HIGH

vs.

FREDERICK E. COYNE, as Collector of United States Internal Revenue for the First District of Illinois, and Ellen T. High, as Executrix of the Last Will and Testament of James L. High.

25091.

Now come the complainants and present their bond on appeal in the sum of three thousand dollars, with Henry Borsch as surety, which bond is now by the court approved, to operate as a supersedeas.

It is further ordered, upon motion of complainants, that the name of Frank E. Coyne in the records of this court in this cause be changed to Frederick E. Coyne.

36 NORTHERN DISTRICT OF ILLINOIS, } ss:
Northern Division,

I, S. W. Burnham, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said court in the cause entitled Shirley T. High and Jessie M. High vs. Frederick E. Coyne, as collector of United States internal revenue for the first district of Illinois, and Ellen T. High, as executrix of the last will and testament of James L. High, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of Circuit Court U. S., Northern Dist. Illinois, of said court, at my office, in the city of Chicago, in said district, this first day of March, 1899.

S. W. BURNHAM, Clerk.

37 UNITED STATES OF AMERICA, *et al.*:

To F. E. Coyne, as collector of United States internal revenue for the first district of Illinois, and to Ellen T. High, as executrix of and under the last will and testament of James L. High, deceased, Greeting :

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a appeal from the circuit court of the United States for the northern district of Illinois, Northern division, wherein Shirley T. High and Jessie M. High are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Seaman this 1st day of March, in the year of our Lord one thousand eight hundred and ninety-nine (1899).

WM. H. SEAMAN, *Judge.*

38 [Endorsed:] No. 25091. Supreme Court of the United States. Shirley T. High *et al.* vs. F. E. Coyne, collector, *et al.* Citation.

The undersigned hereby accept service of the within citation and the delivery of a true copy thereof this twenty-eighth day of February, A. D. 1899.

FREDERICK E. COYNE,
By S. H. BETHEA, *His Solicitor.*

ELLEN T. HIGH,
By JOHN F. HOLLAND, *Her Solicitor.*

Endorsed on cover: File No., 17,314. N. Illinois C. C. U. S. Term No., 729. Shirley T. High and Jessie M. High, appellants, *vs.* F. E. Coyne, as collector of United States internal revenue for the 1st district of Illinois, and Ellen T. High, as executrix of James L. High, dec'd. Filed March 4th, 1899.



~~NOTICE OF APPEAL~~

SUPREME COURT OF THE UNITED STATES

CASE NUMBER 100-1000

No. 451

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT
COMPANY, EXECUTOR UNDER THE WILL OF DANIEL
CRAIG, DECEASED, PLAINTIFF IN ERROR.

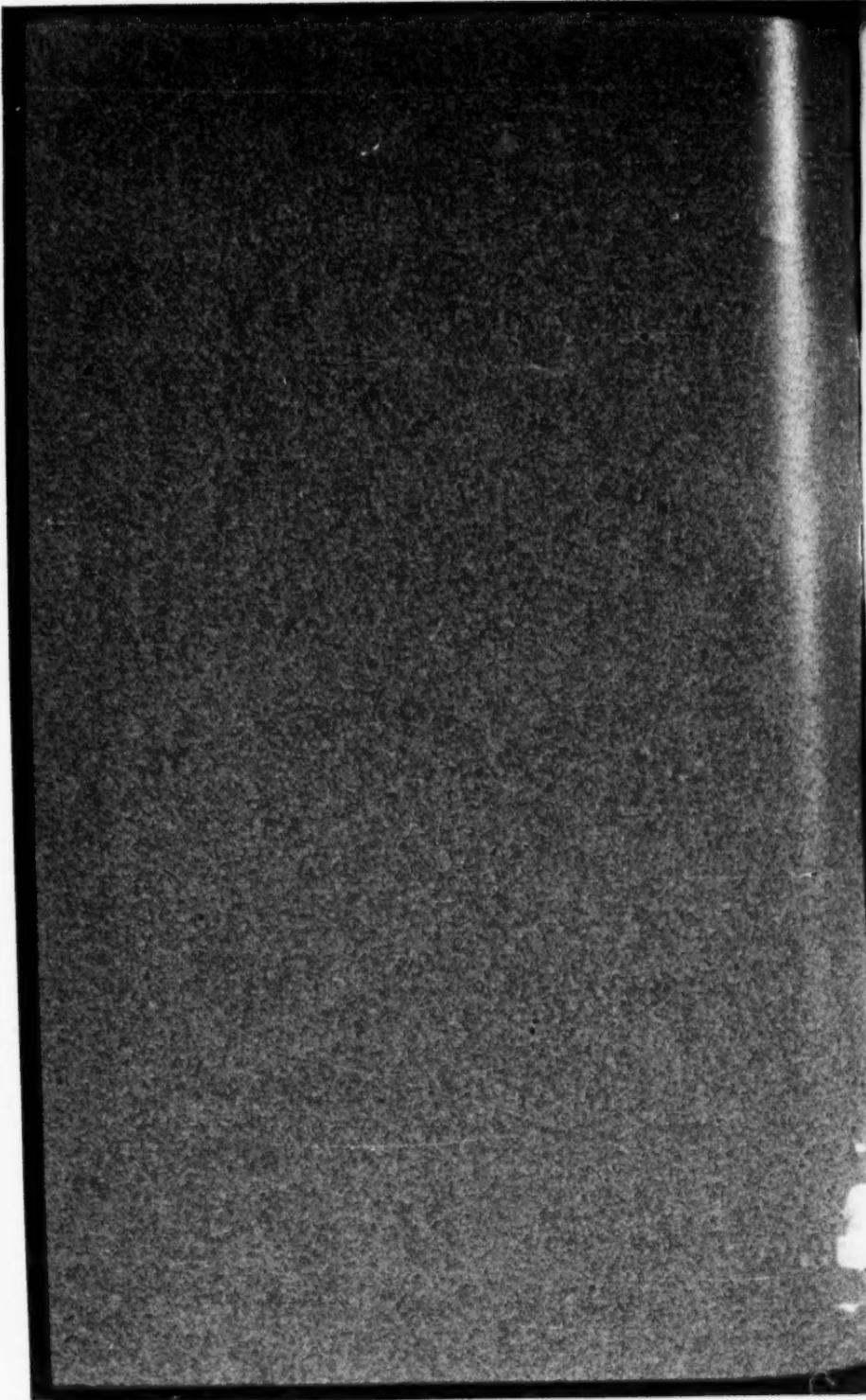
vs.

PENROD & MULLAIN

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

FILED NOVEMBER 17, 1900.

(17,565.)



(17,565.)

SUPREME COURT OF THE UNITED STATES.
OCTOBER TERM, 1899.

No. 451.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT COMPANY, EXECUTOR UNDER THE WILL OF DANIEL CRAIG, DECEASED, PLAINTIFF IN ERROR,

vs.

PENROSE A. MCCLAIN.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF PENNSYLVANIA.

INDEX.

	Original	Prior
Docket entries	1	1
Writ of error	3	1
Citation and acceptance of service	4	2
Caption	5	3
Petition for writ of certiorari	7	3
Transcript from State court	10	4
Docket entries	10	4
Principle for summons	11	5
Summons	12	5
Sheriff's return	13	5
Statement of plaintiff's demand	14	6
Exhibit A—Letter of H. G. McCouch, secretary, to P. A. McClain, collector, May 9, 1899	18	7
B—Affidavit of H. G. McCouch	20	8
C—Letter of Robert Williams, Jr., acting commissioner, to the Fidelity Insurance, Trust and Safe Deposit Company, August 24, 1899	22	9
Proof of service of statement	23	9

	Original.	Print.
Writ of certiorari and return	24	10
Plea	26	11
Order allowing withdrawal of plea, &c	27	11
Demurrer	28	12
Hearing	30	12
Judgment	30	12
Opinion	31	13
Petition for writ of error	33	14
Assignment of errors	37	15
Bond on writ of error	40	16
Clerk's certificate	42	17

1 October Session, 1899.

FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT
Company, Executor under the Will of Daniel
Craig, Dec'd, }
 vs.
PENROSE A. MCCLAIN, Collector of Internal Revenue
for the First Collection District of Pennsylvania. }
 2. Certiorari.

R. C. Dale. James M. Beck.

1899, Sep. 13. Petition of defendant filed. Certiorari for the removal of the case from the court of common pleas No. 2 for the county of Philadelphia to this court allowed and issued.
 " " 14. Certiorari returned & filed with record annexed.
 " " 15. Plea filed.
 " Nov. 11. Order allowing defendant to withdraw plea and file demurrer.
 " " 11. Demurrrer to statement filed.
 " " 13. Argued surdemurrer.
 " " 13. Opinion Dallas and McPherson, JJ., sustaining demurrer to plaintiff's statement and directing judgment to be entered for defendant. Judgment accordingly.

2

1899, Nov. 13. Assignments of error filed.
 " " 13. Petition for writ of error to Supreme Court of the United States filed and allowed.
 " " 13. Writ of error issued and copy lodged in clerk's office for adverse party.
 " " 13. Citation allowed and issued.
 " " 13. Citation returned, service accepted.

3

UNITED STATES, }
Eastern District of Pennsylvania, 1st set:

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you between The Fidelity Insurance, Trust and Safe Deposit Co., executor, plaintiff, and Penrose A. McClain, defendant, in a plea of assumpsit, a manifest error has intervened, to the great damage of the said The Fidelity Insurance, Trust and Safe Deposit Co., executors, as in its complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are

hereby commanded that if judgment thereof be given then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 13th day of November, A. D. one thousand eight hundred and ninety-nine, and in the one hundred and twenty-fourth year of the Independence of the said United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

4 UNITED STATES OF AMERICA, ss:

The President of the United States to Penrose A. McClain, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, within thirty days, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States, eastern district of Pennsylvania, wherein The Fidelity Insurance, Trust and Safe Deposit Company, executor under the will of Daniel Craig, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George M. Dallas, judge of the circuit court of the United States, this 13th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

GEO. M. DALLAS, *Cir. Judge.*

Service accepted.

JAMES M. BECK, *U. S. Atty.*

5 In the Circuit Court of the United States, Eastern District of Pennsylvania.

THE FIDELITY INSURANCE, TRUST & SAFE DEPOSIT CO., Executor }
under the Will of Daniel Craig, Deceased, }
vs.
PENROSE A. MCCLAIN.

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1899, No. 2.

It is thus contained:

Be it remembered that on the 13th day of September, A. D. 1899, James M. Beck, Esq., attorney of the United States for the eastern district of Pennsylvania, comes into court here and presents the petition of Penrose A. McClain for the removal of the cause 6 from the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania; which said petition, being filed, is in the words and of the tenor following, to wit:

7 Circuit Court of the United States, Eastern District of Pennsylvania.

The petition of Penrose A. McClain, collector of internal revenue for the first collection district of Pennsylvania, respectfully represents:

That this suit is commenced by summons against him as defendant by the Fidelity Insurance, Trust and Safe Deposit Company, executor under the will of Daniel Craig, deceased, in the court of common pleas No. 2 for the county of Philadelphia, State of Pennsylvania, to June term, 1899, No. 1212.

That the said suit is brought on account of an act done by the said Penrose A. McClain under the revenue laws of the United States as collector of internal revenue for the first collection district of Pennsylvania, the said suit being brought to recover a certain sum of money paid for and on account of the said plaintiff to the said Penrose A. McClain as collector, as aforesaid, as internal-revenue taxes.

Your petitioner respectfully prays that the said cause may be entered on the docket of your honorable court and proceeded in as a cause therein originally commenced, and that a writ of certiorari be immediately issued by the clerk of your honorable court to the said court of common pleas No. 2 for the county of Philadelphia, to send to the said circuit court of the United States for the eastern district of Pennsylvania the record and proceedings in said cause, according to the provisions of the act of Congress in such case made and provided.

And he will ever pray, &c.

PENROSE A. MCCLAIN.

Penrose A. McClain, being duly sworn according to law, doth depose and say that the facts set forth in the foregoing petition are true to the best of his knowledge and belief.

PENROSE A. MCCLAIN.

Sworn and subscribed before me this twelfth day of September, A. D. 1899.

[SEAL.]

ARMON D. ACHESON,
Notary Public.

I hereby certify that as attorney for the above-named petitioner I have examined the proceedings against him, and have carefully inquired into all the matters set forth in the above petition, and that I believe the same to be true.

JAMES M. BECK,
United States Attorney, Attorney for Petitioner.

9 Endorsed: U. S. circuit court, Oct. sess., 1899, No. 2.
Fidelity Ins., Trust & Safe Deposit Co., executors, etc., vs.
Penrose A. McClain, collector. Petition for certiorari. Filed Sep. 13, 1899. Samuel Bell, clerk. H. R. James M. Beck, U. S. attorney, att'y for petitioner.

10 *Exemplification.*

PHILADELPHIA COUNTY, }
State of Pennsylvania, }
set:

Among the records and proceedings of the court of common pleas No. two for the county of Philadelphia, State of Pennsylvania, the following may be found as matter of file and of record at No. 1212, June term, 1899, to wit:

Docket Entries.

June Term, 1899.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT CO., Executors under Will of Daniel Craig, Dec'd,	} 1012.
vs. PENROSE A. MCCLAIN.	

R. C. Dale.

Aug. 29, 1899.—Statement and rule to file aff't of defence filed.

Sept. 1, 1899.—Aff't of service of copy of statement and rule to file aff't of defence, Aug. 29, 1899, filed.

Sums. assumpsit exit Aug. 29, 1899; ret. 1 Mon., Sep., '99; served Sept. 13, 1899.

Certiorari from circuit court of United States for E. D. of Pa. of Oct. sess., 1899, No. 2, bro't into office.

11 C. P. No. 2, June Term, 1898.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT
Company, Executor under the Will of Daniel Craig,
Deceased, }
vs.
PENROSE A. MCCLAIN. } No. —.

Issue summons assumpsit as above, returnable the first Monday
of September next.

R. C. DALE,
Att'y for Plaintiff.

8, 29, '99.
To the proth'y.

Endorsed: C. P. No. 2, June term, 1899. The Fidelity Ins.,
Trust & Safe Deposit Co., executor under the will of Daniel Craig,
dec'd, vs. Penrose A. McClain. Praecept. Assumpsit. Filed Aug.
29, 1899. Hunter, pro proth'y. R. C. Dale.

12 *Summons.*

COUNTY OF PHILADELPHIA, ss:

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the
county of Philadelphia, Greeting:

We command you that you summon Penrose A. McClain, late of
your county, so that he be and appear before our judges, at Phil-
adelphialia, at our court of common pleas No. 2 of the county of Phil-
adelphialia, to be holden at Philadelphia, in and for said county, on
the first Monday of September next, there to answer the Fidelity
Insurance, Trust and Safe Deposit Company, executor under the
will of Daniel Craig, deceased, of a plea of assumpsit, and to have
you then and there this writ.

Witness the Honorable Samuel W. Pennypacker, president judge
of our said court, at Philadelphia, the 29th day of August, in the
year of our Lord one thousand eight hundred and ninety-nine
(1899).

J. N. S. HUNTER,
Pro Prothonotary.

13 Endorsed: 1212, June term, 1899, court of common pleas
No. 2. The Fidelity Ins., Trust & Safe Deposit Co., exec-
utor under the will of Daniel Craig, dec'd, vs. Penrose A.
McClain. Summons. Assumpsit. Paid. R. C. Dale.

Served Penrose A. McClain by giving to him August 29th, 1899,
a true and attested copy of the within writ and making known to
him the contents thereof.

So answers—

GEO. K. HOGG, *Deputy Sheriff.*
ALEXANDER CROW, JR., *Sheriff.*

14

C. P. No. 2, June Term, 1899.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT COMPANY, Executor under the Will of Daniel Craig,

vs.

PENROSE A. MCCLAIN.

} 1212.

Statement of Plaintiff's Demand.

This action is brought by the plaintiff, The Fidelity Insurance, Trust and Safe Deposit Company, against the defendant, Penrose A. McClain, to recover the sum of one hundred and sixty eight $\frac{75}{100}$ dollars (\$168.75), with interest from the 9th day of May, 1899; which sum the plaintiff doth aver is justly due and owing to it upon the following cause of action:

The defendant, Penrose A. McClain, is collector of the United States internal revenue for the first district in the State of Pennsylvania; that on the 29th day of April, 1899, the said defendant, acting as collector of internal revenue, did serve a notice upon the plaintiff, notifying the plaintiff that a tax had been assessed against it as executor of the estate of Daniel Craig, deceased, under the provisions of an act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved the 13th day of June, 1898, and that the amount of said tax so assessed was \$168.75; that in consequence of said assessment and to avoid the pains and penalties imposed by law for default in making payment of any taxes so assessed the plaintiff did on the 9th day of May, 1899, make payment to the said Penrose A. McClain of the amount of the tax so assessed, said payment being made under protest, which protest was at the time of said payment made by a writing of which a copy is hereunto annexed as "Exhibit A," and that thereupon the plaintiff, pursuant to the provisions of the act of Congress in such case made and provided, did make a claim for the refunding of said tax, which said claim made in writing of which a copy is hereunto annexed as "Exhibit B" was filed with the said defendant on the 9th day of May, 1899, but notwithstanding said application for the refunding of said tax, which was duly presented to the Commissioner of Internal Revenue of the United States, said Commissioner of Internal Revenue did reject said application for refunding and did give to the plaintiff notice of his action by a writing of which a copy is hereto annexed as "Exhibit C," and the plaintiff is advised by counsel and doth aver that the tax so assessed against the plaintiff and payment of which was exacted by the defendant of the plaintiff was unlawfully assessed and exacted, because the plaintiff doth aver that the act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898, under which said tax was assessed, is unconstitutional in so far as its provisions relate to the taxation of legacies and distributive shares of personal property, in that in the sections

of said act relating to said subject the provisions of the Constitution of the United States have been disregarded as follows:

(a.) Article I, section 8, of the Constitution of the United States, which reads as follows:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

Notwithstanding which said constitutional requirement, the taxes and excises provided in said statute upon legacies and distributive shares of personal property are not uniform.

(b.) Article I, section 2, paragraph 3, of the Constitution:

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

And the plaintiff doth further aver that notwithstanding the demand made for the refunding of said tax, as aforesaid, said defendant has neglected and refused to refund the same.

Wherefore the plaintiff brings suit.

RICHARD C. DALE,
Att'y for the Plaintiff.

17 STATE OF PENNSYLVANIA, }
County of Philadelphia, }^{ss}:

H. Gordon McCouch, being duly sworn according to law, doth depose and say: I am the secretary of The Fidelity Insurance, Trust and Safe Deposit Company, the plaintiff in the above cause. The averments contained in the foregoing statement of plaintiff's demand are just and true, as I verily believe.

H. GORDON MCCOUCH.

Sworn and subscribed to before me this 29th day of August, 1899.

JOS. McMORRIS,
Notary Public.

[SEAL.]

18

"EXHIBIT A."

MAY 9TH, 1899.

P. A. McClain, Esq., collector United States internal revenue, first district, State of Pennsylvania.

SIR: Pursuant to notice served upon us from you, under date of April 29, 1899, informing us that a tax under the internal-revenue laws of the United States, amounting to \$168.75, has been assessed upon us by the Commissioner of Internal Revenue and transmitted to you for collection, we hereby make payment to you of the amount so assessed: but in making said payment do so under protest, upon the ground that the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898, under which said tax has been assessed, is unconstitutional, in that it disregards the provisions—

(A) of article 1, § 8, of the Constitution of the United States, which reads as follows:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

Notwithstanding which said constitutional requirements, the taxes and excises provided in said statute upon legacies and distributive shares of personal property is not uniform.

(B.) Said act of Congress before mentioned is also in disregard of article 1, § 2, par. 3, of the Constitution of the United States, which provides that "representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

Wherefore, in making this payment under protest, the undersigned gives notice of an intention to take such steps as may be provided by law for the recovery of the same.

Very respectfully, H. G. MCCOUCH, Secretary.

20

"EXHIBIT B"

STATE OF PENNSYLVANIA, }
County of Philadelphia, } 88:

H. G. McCouch, of the city of Philadelphia and State and county aforesaid, being duly sworn according to law, deposes and says that he is the secretary of the Fidelity Insurance, Trust & Safe Deposit Co., executor under the will of Daniel Craig; that upon the 29th day of April, A. D. 1899, they were assessed an internal-revenue tax of one hundred and sixty-eight $\frac{7}{10}$ dollars, being tax upon the estate of Daniel Craig under the act of June 13, 1898, which amount they afterwards, on the 9th day of May, A. D. 1899, paid to P. A. McClain, Esq., collector of internal revenue for the first district of Pennsylvania, which amount, as this deponent verily believes, should be refunded for the following reasons, viz:

The act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13, 1898, under which said tax has been assessed, is unconstitutional in that it disregards the provisions—

(a.) of article 1, sec. 8, of the Constitution of the United States, which reads as follows: "The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States, but all duties, imposts and excises shall be uniform throughout the United States." Notwithstanding which said constitutional requirement the taxes and excises provided in said statute upon legacies and distributive shares of personal property *is* not uniform.

(b.) Said act of Congress before mentioned is also in disregard of article 1, section 2, par. 3, of the Constitution of the United States, which provides that "representative and direct taxes

shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

And this deponent now claims that by reason of the payment of the said sum of one hundred and sixty-eight $\frac{75}{100}$ dollars they are justly entitled to have the sum of one hundred and sixty-eight $\frac{75}{100}$ dollars refunded, and they now ask and demand the same; and this deponent further makes oath that he has not heretofore presented any claim for the refunding of the above amount or any part thereof.

(Signed)

H. GORDON McCOUNCH.

Sworn and subscribed before me this 9th day of May, A. D. 1899.

(Signed)

W. C. HARRIS,

[NOTARIAL SEAL.]

Notary Public.

R. C. DALE.

Att'y, Room 752 Bullitt Bldg., Phila.

22

"EXHIBIT C."

TREASURY DEPARTMENT,

OFFICE OF THE COMMISSIONER OF INTERNAL REVENUE,

WASHINGTON, D. C., August 24th, 1899.

The Fidelity Insurance, Trust and Safe Deposit Co., Philadelphia, Penna.

SIR: Your claim for the refunding of one hundred sixty-eight $\frac{75}{100}$ dollars has been rejected for the reason that the legacy tax was legally assessed and collected.

Respectfully yours,

ROB'T WILLIAMS, JR.,
Acting Commissioner.

C. P. No. 2, June Term, 1899.

23 THE FIDELITY INS., TRUST & SAFE DEPOSIT CO., }
 Executor under the Will of Daniel Craig, Dec'd, }
 vs. }
 No. 1212.
 PENROSE A. MC CLAIN. }

George Wilhelm, being sworn according to law, deposes and says that on the 29th day of August, 1899, he duly served upon Penrose A. McClain, internal-revenue office, above-named defendant, a copy of plaintiff's statement filed in above case, with a notice endorsed thereon that a rule had been entered on the defendant to file an affidavit of defence in fifteen (15) days or judgment *sec. reg. by*—

Given to him the said copy and making known to him the contents.

GEORGE A. WILHELM.

Sworn and subscribed before me this 1st day of September, A. D. 1899.

C. N. ROBERTS,
Notary Public.

Endorsed : 1212, June term, 1899, C. P. No. 2. Fidelity Ins., Trust & Safe Dep. Co., executor under the will of Daniel Craig, vs. Penrose A. McClain. Filed Sep. 1, 1899. C. B. Roberts, pro protonotary. Affidavit of service of statement. Assumpsit. R. C. Dale.

24 UNITED STATES OF AMERICA, }
 Eastern District of Pennsylvania, } *set:*

The President of the United States to the honorable the judges of the court of common pleas No. 2 for the county of Phila., State of Penna., Greeting :

Whereas lately, in your said court, a suit was commenced by summons against Penrose A. McClain, collector of internal revenue for the first collection district of Pennsylvania, by the Fidelity Insurance, Trust & Safe Deposit Co., executor under the will of Daniel Craig, deceased, to June term, 1899, No. 1212; which said suit, as it is said, is still pending before you in the said court of common pleas No. 2 undetermined ; and whereas, on the application of the said Penrose A. McClain, collector, &c., to the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, on a suggestion, supported by proper evidence, that the said suit was brought on account of an act done by him under color of his office as collector of internal revenue for the first district of Pennsylvania, the said suit having been brought to recover certain moneys paid by the said plaintiff to the said Penrose A. McClain, collector, &c., as aforesaid, for internal-revenue taxes claimed to be due and owing from the said plaintiff to the United States of America, and praying that a writ of certiorari may be immediately issued by the clerk of the said circuit court of the United States directed to the said court of common pleas No. 2 to send to the said circuit court of the United States the record and proceedings in the said cause, according to the provision of the act of Congress in such case made and provided :

Wherefore you are hereby commanded to transmit, under your seal, the record and proceedings of the said suit, with all things thereunto relating, unto the said circuit court of the United States, to be holden at Philadelphia, for the eastern district of Pennsylvania, in the third circuit, on the first Monday of October, plainly and distinctly, in as full and ample manner as it now remains before you, together with this writ, so that the said circuit court of the United States may be able therein to proceed and do what shall appear of right ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this [SEAL.] 13th day of September, A. D. 1899, and in the 124th year of the Independence of the United States.

HENRY B. ROBB,
Deputy Clerk of Circuit Court U. S.

25 [Endorsed:] C. P. No. 2, No. 1212, June, 1899. No. 2,
October sess., 1899, circuit court U. S. Fidelity Ins., Trust
& Safe Deposit Co., executor, &c., vs. Penrose A. McClain, collector.
Writ of certiorari. Sept. 13, 1899, bro't into office. C. B. R. Filed
Sept. 14, 1899. Samuel Bell, clerk, per H. R.

To the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia:

The record and process and all things touching the same, so full and entire as before us they remain, we certify and send as within we are commanded.

SAM'L W. PENNYPACKER. [SEAL.]

26 And afterwards, to wit, on the 15th day of September, 1899,
the said defendant, by James M. Beck, Esq., his attorney,
comes into court here and files his plea; which said plea is as follows, to wit:

United States Circuit Court, Eastern District of Pennsylvania,
October Sessions, 1899.

FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT COMPANY,	No. 2.
Executor under the Will of Daniel Craig, Deceased,	
vs.	
PENROSE A. MCCLAIN, Collector of Internal Revenue for the	-
First Collection District of Penna.	

The defendant pleads non-assumpsit.

JAMES M. BECK,
By K., *United States Attorney.*

Endorsed: 2, Oct. sess., 1899, U. S. cir. et. Fidelity Ins., &c.,
Co. vs. Penrose A. McClain, collector, &c. Plea. Filed Sep. 15,
1899. Samuel Bell, clerk. H. R. James M. Beck, U. S. att'y.

27 U. S. Circuit Court, October Sessions, 1899.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT	No. 2.
Company, etc.,	
vs.	
PENROSE A. MCCLAIN.	

And now, to wit, this 11th day of November, A. D. 1899, the court, on motion of James M. Beck, Esq., attorney for the defendant, allows the defendant to withdraw his plea heretofore filed in this case and to file in place thereof a demurrer to the plaintiff's statement.

GEO. M. DALLAS, J.

Endorsed: U. S. C. C., E. D. of Pa., No. 2, Oct. sess., 1899.
Fidelity Ins. Co. vs. Penrose A. McClain. Order allowing plea to
be withdrawn and demurrer filed. Filed Nov. 11, 1899. Samuel
Bell, clerk.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT
 Company, etc.,
 vs.
 PENROSE A. McCCLAIN.

No. 2.

And now, to wit, this 11th day of November, A. D. 1899, the said defendant, by James M. Beck, Esq., his attorney, comes and says that the statement is not sufficient in law to maintain the plaintiff's action, and the defendant therefore demurs thereto and in support of his said demurrer assigns the following reasons:

1. Because the act of Congress entitled "An act to provide ways and means to meet war expenditures, and for other purposes," approved June 13, 1898, under which the tax sued for in this case was assessed, is not unconstitutional, as alleged in plaintiff's statement, in so far as the provisions of the said act relate to the tax on legacies and distributive shares of personal property.

2. Because the sections of the said act relating to the tax on legacies and distributive shares of personal property are not unconstitutional, as alleged in the said statement, but are in harmony with the following provisions of the Constitution of the United States, to wit:

29 Article 1, section 8, of the Constitution of the United States, which reads as follows:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

And—

Article 1, section 2, paragraph 3, of the Constitution of the United States, which reads as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

JAMES M. BECK,
U. S. Attorney, Attorney for Defendant.

Endorsed: U. S. cir. et., E. D. of Pa. Fidelity Ins. Co. *vs.* Penrose A. McClain. Demurrer to statement. Filed Nov. 11, 1899. Samuel Bell, clerk.

30 And afterwards, to wit, on the 13th day of November, A. D. 1899, come the parties aforesaid by their counsel aforesaid, and this cause being called for argument sur demurrer to plaintiff's statement, and the court, being fully advised, renders the following opinion sustaining demurrer and directing judgment to be entered for the defendant; whereupon judgment is entered accordingly.

U. S. C. C., October Session, 1899.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT COMPANY, Executor under the Will of Daniel Craig,
vs.
 PENROSE A. MCCLAIN. } No. 2.

By the court, Dallas and McPherson, JJ.:

The demurrer filed to the plaintiff's statement of demand raises the question whether the succession tax or duty imposed by sections 29, 30, and 31 of the act of Congress approved June 13, 1898, is in conflict with the provisions of the Federal Constitution. Two clauses of the Constitution are invoked.

(a.) Article 1, section 8, which provides as follows:

"The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

(b.) Article 1, section 2, par. 3, which provides as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

This question has already been considered by the circuit court of the United States for the northern district of Illinois in the case of *High vs. Coyne*, 93 Fed. Rep., 450, and the contention of the plaintiff that the statute is in conflict with the Federal Constitution was not sustained.

The court is informed that the case is now pending on appeal in the Supreme Court of the United States.

In view of the great importance of the question and the necessity of its ultimate determination by the court of last resort, we
 32 feel that it is proper for this court to follow the decision of the circuit court in Illinois without any independent examination of the questions presented.

We therefore sustain the demurrer to the plaintiff's statement and direct that judgment in this cause be entered for the defendant.

Endorsed : 2, Oct. session, 1899, U. S. C. C. Fidelity Insurance, Trust, &c., Co. vs. Penrose A. McClain, collector, &c. Opinion sustaining demurrer, &c. Filed Nov. 13, 1899. Samuel Bell, clerk.

33 U. S. C. C., October Sessions, 1899.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT
Company, Executor under the Will of Daniel Craig,
Deceased,

vs.
PENROSE A. MCCLAIN.

} No. 2.

Petition for Writ of Error.

The petition of the Fidelity Insurance, Trust and Safe Deposit Company, executor under the will of Daniel Craig, respectfully shows:

First. That the above-entitled action is brought by it against P. A. McClain, collector of United States internal revenue for the first district, in the State of Pennsylvania, to recover the sum of one hundred and sixty-eight $1\frac{5}{8}$ dollars, with interest from the 9th day of May, 1899, a sum of money exacted by him of the plaintiff in performance of his official duty as collector, as aforesaid, and which sum has been paid by the said defendant into the Treasury of the United States, which sum, however, the plaintiff doth aver was unlawfully exacted and collected by the said defendant under the provisions of an act of Congress entitled "An act to provide ways and means to meet war expenditures and for other purposes," approved June 13th, 1898, the said act being in derogation of rights secured to the citizens of the United States.

(a.) Article 1, section 8, of the Constitution of the United States, which reads as follows:

34 "The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

(b.) Article 1, section 2, paragraph 3, of the Constitution of the United States, which reads as follows:

"Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

Second. Your petitioner doth further show, notwithstanding the premises, the circuit court of the United States for the eastern district of Pennsylvania did, upon the 13th day of November, 1899, sustain a demurrer filed by defendant to the plaintiff's statement of its demand, in which statement of demand the constitutional rights, as aforesaid, were asserted, and did enter a final judgment in favor of the defendant and against the plaintiff.

Wherefore your petitioner prays that a writ of error be allowed to the judgment of said circuit court.

THE FIDELITY INSURANCE, TRUST &
SAFE DEPOSIT COMPANY,

[SEAL.]

Executors of the Will of Daniel Craig.
JOHN B. GEST, President.

Attest: H. GORDON McCOUCH, *Secretary.*

35 STATE OF PENNSYLVANIA, {
County of Philadelphia, ss:

II. Gordon McCouch, being duly sworn according to law, doth depose and say that he is the secretary of The Fidelity Insurance, Trust and Safe Deposit Company, plaintiff in the above-entitled case, and that the statements contained in the foregoing petition are just and true as he verily believes.

(Signed)

H. GORDON MCCOUCH.

Sworn and subscribed to before me this 13th day of November, 1899.

[SEAL.]

WASHINGTON HERSH,
Notary Public.

36 [Endorsed :] 2, U. S. C. C., October sessions, 1899. The Fidelity Ins., T. & S. D. Co., executor, etc., vs. Penrose A. McClain. Petition for writ of error allowed. Geo. M. Dallas, cir. J. Filed Nov. 13, 1899. Samuel Bell, clerk. R. C. Dale.

37 U. S. C. C., October Sessions, 1899.

THE FIDELITY INSURANCE, TRUST AND SAFE DEPOSIT COMPANY, Executor under the Will of Daniel Craig, Deceased, }
vs. } No. 2.
 PENROSE A. MCCLAIN. }

Assignments of Error.

First. That the court erred in sustaining the demurrer to the plaintiff's statement of claim, because by the statement of plaintiff's demand it appeared that the tax assessed against the plaintiff and exacted by the defendant was illegal, because the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," was in derogation of the provisions of article 1, section 8, of the Constitution of the United States, which reads as follows :

"The Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States."

Second. That the court erred in sustaining the demurrer to the plaintiff's statement of claim, because by the statement of plaintiff's demand it appeared that the tax assessed against the plaintiff and exacted by the defendant was illegal, because the act of Congress approved June 13, 1898, entitled "An act to provide ways and means to meet war expenditures and for other purposes," was in derogation of the provisions of article 1, section 2, paragraph 3, of the Constitution of the United States, which reads as follows .

38 "Representatives and direct taxes shall be apportioned among the several States which may be included in this Union, according to their respective numbers."

R. C. DALE,
For Plaintiff.

39 [Endorsed:] 2, U. S. C. C., October sessions, 1899. The Fidelity Ins., T. & S. D. Co., executor, etc., vs. Penrose A. McClain. Assignments of error. Filed Nov. 13, 1899. Samuel Bell, clerk. R. C. Dale.

40 Circuit Court of the United States for the Eastern District of Pennsylvania, in the Third Circuit.

Know all men by these presents that The Fidelity Insurance, Trust and Safe Deposit Company, executor under the will of Daniel Craig, deceased, and The American Surety Company are held and firmly bound unto Penrose A. McClain in the sum of two hundred and fifty dollars, to be paid to the said Penrose A. McClain; for the payment of which, well and truly to be made, we bind ourselves and each of us and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 13th day of November, in the year one thousand eight hundred and ninety-nine (1899).

Whereas the above-named Fidelity Insurance, Trust & Safe Deposit Company, executor under the will of Daniel Craig, deceased, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States of the eastern district of Pennsylvania:

Now, therefore, the condition of this obligation is such that if the above-named Fidelity Insurance, Trust & Safe Deposit Company, executor as aforesaid, shall prosecute said writ of error to effect and answer all damages and costs if it fail therein, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE FIDELITY INSURANCE, TRUST &
SAFE DEPOSIT COMPANY.
JOHN B. GEST, *President.*

Attest: H. GORDON MCCOUCH, *Secretary.* [SEAL.]

AMERICAN SURETY CO. OF NEW YORK,
By JNO. C. S. DAVIS, *Resident Vice-President.*

Attest: F. H. WILLIAMS,
Resident Ass't Secretary. [SEAL.]

Nov. 13, 1899.

Approved:
GEO. M. DALLAS, *Cir. Judge.*

41 [Endorsed:] C. C. U. S., E. D. of Pa., 2, Oct. sess., 1899. Fidelity Ins. Co. vs. McClain. Bond surwrit of error. Filed Nov. 13, 1899. Samuel Bell, clerk.

42 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, } set:

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true, complete, and faithful copy of the original pleas and proceedings in the case of The Fidelity Insurance, Trust and Safe Deposit Company, executor under the will of Daniel Craig, deceased, vs. Penrose A. McClain, No. 2, October sess., 1899, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Seal U. S. Circuit Court, Philadelphia, this 14th day of November, E. D. Pennsylvania. ber, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

SAMUEL BELL,
Clerk of C. C.

[Endorsed:] No. 2, Oct. sessions, 1899, circuit court United States, eastern district of Pennsylvania. Fidelity Ins., Trust & Safe Dep. Co., executor, vs. McClain. Certified copy of record.

Endorsed on cover: File No., 17,565. E. Pennsylvania C. C. U. S. Term No., 451. The Fidelity Insurance, Trust & Safe Deposit Company, executor under the will of Daniel Craig, deceased, plaintiff in error, vs. Penrose A. McClain. Filed November 17th, 1899.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1869.

No. 468.

GEORGE T. MURDOCK, AS EXECUTOR OF JANE H. SHERMAN, DECEASED, PLAINTIFF IN ERROR,

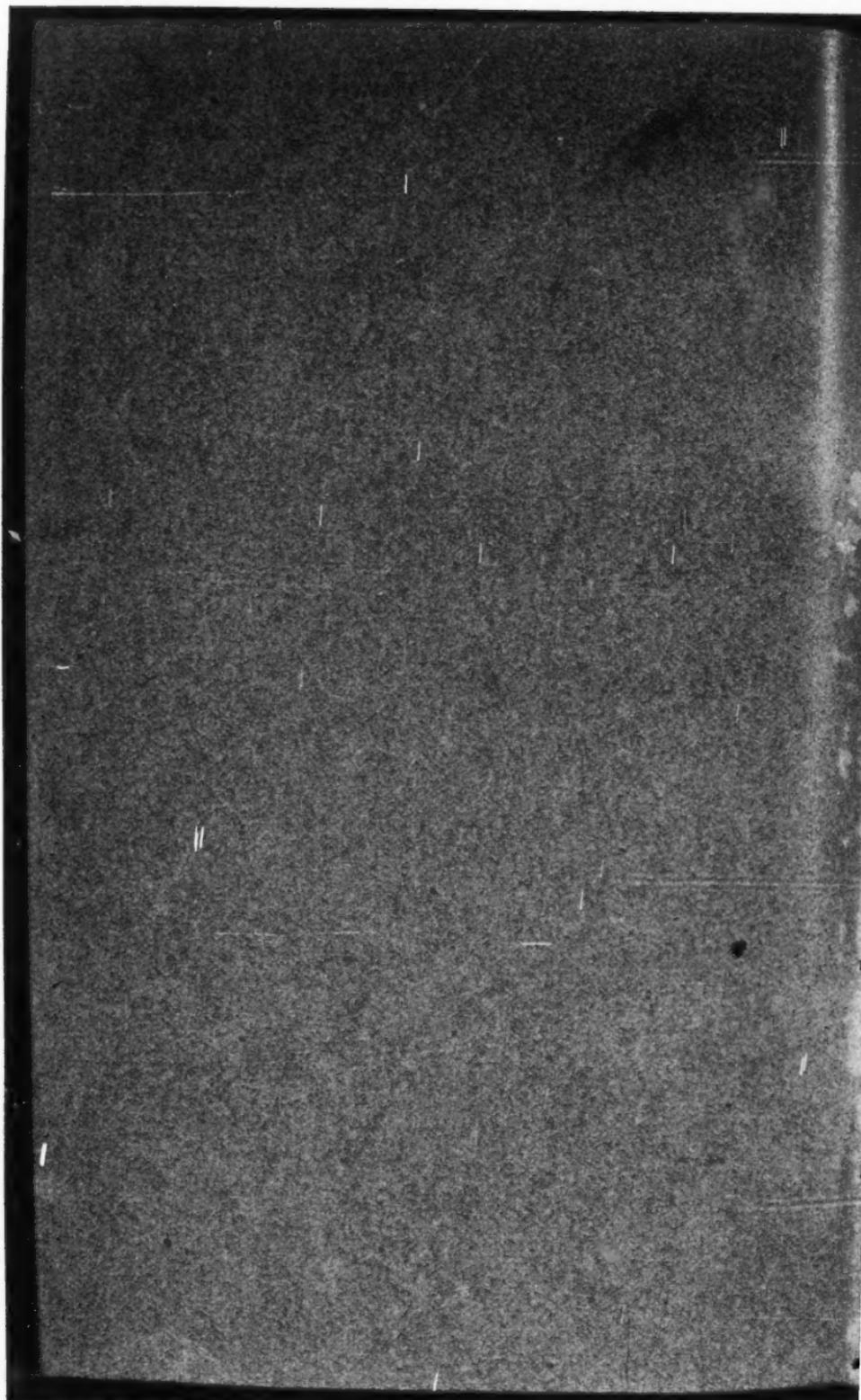
vs.

JOHN G. WARD, AS U. S. COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 13, 1869.

(17,572.)



(17,572.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 458.

GEORGE T. MURDOCK, AS EXECUTOR OF JANE H. SHERMAN, DECEASED, PLAINTIFF IN ERROR,

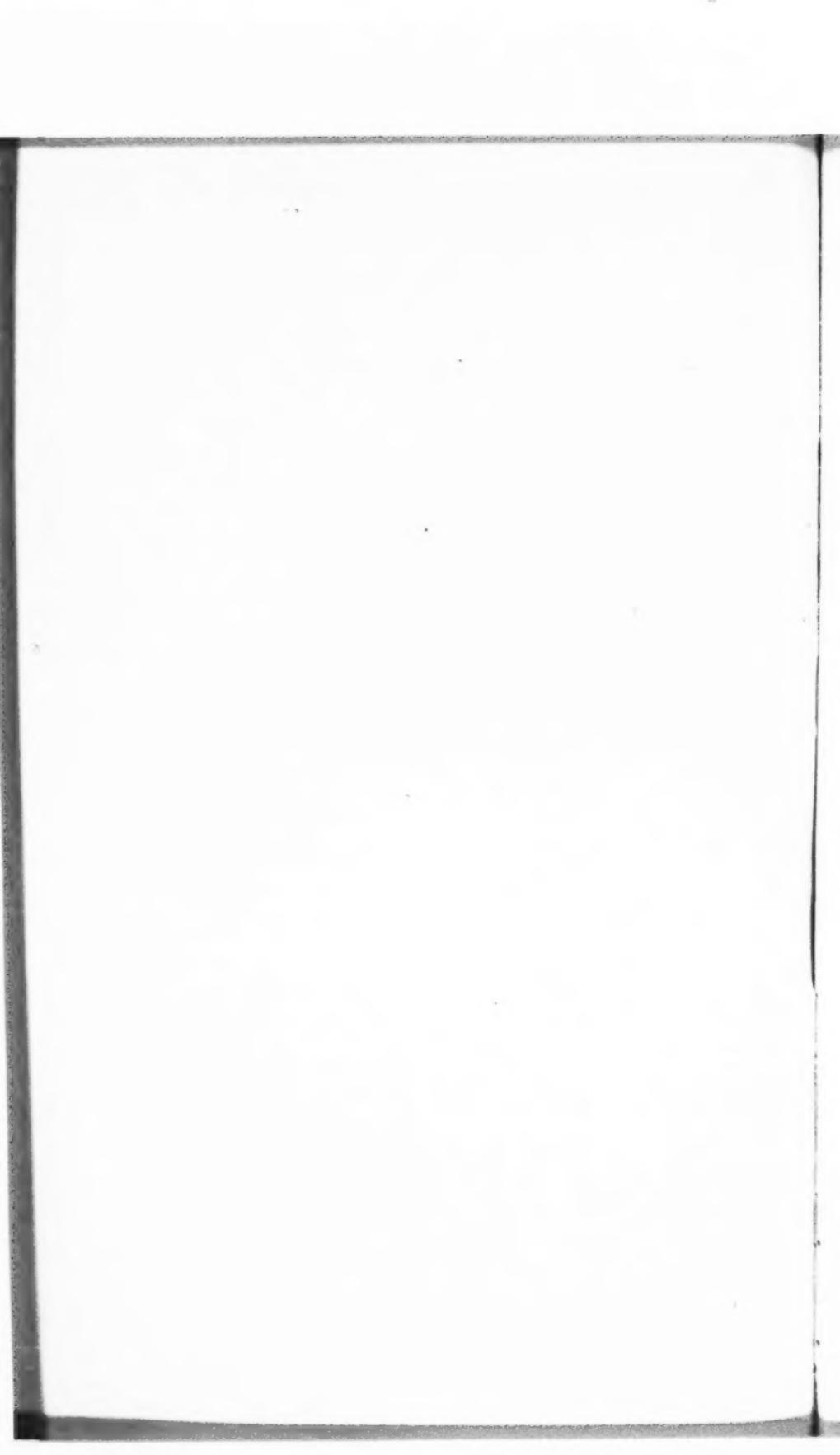
vs.

JOHN G. WARD, AS U. S. COLLECTOR OF INTERNAL REVENUE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate and return	2	2
Petition for writ of error and allowance of same	3	2
Petition for removal	5	3
Writ of certiorari	9	5
Transcript from State court	11	5
Suminons.....	11	5
Complaint.....	12	6
Demurrer.....	19	9
Order sustaining demurrer	20	10
Judgment	22	10
Assignment of errors	24	11
Bond on writ of error.....	27	13
Citation	31	15



1 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, plaintiff in error, against John G. Ward, as United States collector of internal revenue, fourteenth collection district, State of New York, defendant in error, a manifest error hath happened, to the great damage of the said George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 22nd day of November, 1899, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 17th day of November, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JNO. A. SHIELDS,

*Clerk of the Circuit Court of the United States of America
for the Southern District of New York, in the Second Circuit.*

The foregoing writ is hereby allowed.

E. HENRY LACOMBE,
U. S. Circuit Judge.

2 [Endorsed:] E. & A. B. 1718. Supreme Court of the United States. George T. Murdock, as executor, &c., plaintiff in error, vs. John G. Ward, collector of internal revenue, 14th dist. of N. Y., defendant in error. Writ of error. Charles E. Patterson & Alpheus T. Bulkeley, attorneys for plaintiff in error, 25 North Pearl street, Albany, N. Y. Due service of a copy of the within writ of error is hereby admitted this — day of —, 189—, — — —, attorney for defendant in error. A copy of the within paper has been

this day received at this office. Nov. 17, 1899. Henry L. Burnett, U.S. attorney. U. S. circuit court. Filed Nov. 17, 1899. John A. Shields, clerk. 1.45 p'd.

UNITED STATES OF AMERICA, }
Southern District of New York, }^{ss:}

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three (3) to 30, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, plaintiff in error, against John G. Ward, as United States collector of internal revenue, fourteenth collection district, State of New York, defendant in error, as the same remains of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this twenty-first day of November, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the United States the one hundred and twenty-fourth.

[Seal of U. S. Circuit Court, South. Dist., New York.]

JOHN A. SHIELDS, Clerk.

[Ten-cent U. S. internal-revenue stamp, canceled Nov. 21, 1899. J. A. S.]

3 In the Circuit Court of the United States for the Southern District of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament }
of Jane H. Sherman, Deceased, Plaintiff,
 } against

JOHN G. WARD, as United States Collector of Internal Revenue, }
Fourteenth Collection District, State of New York, Defendant. }

And now comes George T. Murdock, executor of the last will and testament of Jane H. Sherman, deceased, and considering himself aggrieved by the judgment entered herein on the 16th day of November, 1899, does hereby pray that a writ of error be allowed from the said judgment, returnable to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the Supreme Court of the United States.

And he presents herewith his assignment of errors.

CHARLES E. PATTERSON AND
ALPHEUS T. BULKELEY,
Attorneys for Plaintiff in Error, No. 25 North
Pearl Street, Albany, N. Y.

And now, to wit, on November 17th, 1899, it is ordered that the writ of error be allowed as prayed for.

E. HENRY LACOMBE,
Circuit Judge.

4 (Endorsed:) U. S. circuit court, southern district of New York. George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, plaintiff, against John G. Ward, as United States collector of internal revenue, fourteenth collection district, State of New York, defendant. Petition for writ of error. Charles E. Patterson and Alpheus T. Bulkeley, att'y's for pl'ff in error, No. 25 North Pearl St., Albany, N. Y. A copy of the within paper has been this day received at this office. Nov. 17, 1899. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Nov. 17, 1899. John A. Shields, clerk.

5 Circuit Court of the United States, Southern District of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and
Testament of Jane H. Sherman, Deceased, Plaintiff, }
vs. }
JOHN G. WARD, Collector of Internal Revenue for the }
Fourteenth District of the State of New York, De- }
fendant. } Petition.

To the judges of the circuit court of the United States of America
for the southern district of New York:

The petition of John G. Ward, the defendant above named,
respectfully shows:

First. That the above-entitled action has been brought in the
supreme court of the State of New York in and for the county of
New York; that said action is now at issue, and that no trial has
been had in said cause.

Second. That said action is brought by the said plaintiff against
the above-named defendant to recover from said defendant the sum
of \$36,827.53, being a tax collected by defendant from the plaintiff
as an internal-revenue tax upon the estate of one Jane H. Sherman,
deceased, under and in pursuance of an act of Congress of the
United States commonly known as "the war-revenue law."

Third. That the matter in dispute in said action exceeds,
6 exclusive of interest and costs, the sum of \$2,000, as appears
from the summons and complaint in said action, copies of
which are hereto annexed and marked Exhibits "A" and "B,"
respectively, and are made a part of this petition.

Fourth. That this suit is of a civil nature and has been com-
menced in a court of a State, to wit, the supreme court of the State
of New York, against this defendant, who, on the 4th day of April,
1899, and at all the times mentioned and set forth in the complaint
herein, was an officer appointed under or acting by authority of the
revenue law of the United States, to wit, a collector of internal reve-

nue for the fourteenth district of the State of New York, duly commissioned as such by the President of the United States, and exercising the functions of such officer in accordance with such appointment, having his office and official place of residence at the city of Albany, in the State of New York. This action is brought on account of an alleged act done under color of his office or of said law or on account of a right, title, and authority claimed by this defendant as such officer under such law, and the same is removable to the United States circuit court for the southern district of New York under and by virtue of section 643 of the Revised Statutes of the United States.

Fifth. That this petitioner therefore prays that in pursuance of said section 643 of the Revised Statutes of the United States and of the acts of Congress in such case made and provided the said case so commenced as aforesaid in the said supreme court of the State of

New York, in the county of New York, may be removed
7 therefrom as to this defendant and entered on the docket of
this honorable court and thereafter proceeded in as a cause
originally commenced in this court; and this petitioner will forever
pray, &c.

JOHN G. WARD,
By HENRY L. BURNETT, *Petitioner.*

SOUTHERN DISTRICT OF NEW YORK, }
City and County of New York, } ss:

Henry L. Burnett, being duly sworn, says that he is the United States attorney for the southern district of New York; that he has read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of the deponent except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true; that the reason why this verification is not made by the petitioner in person is that he resides at Albany, New York, and is not at the present time within this jurisdiction; that the grounds of deponent's belief as to all matters stated in said petition not upon his own knowledge is derived from papers and correspondence in deponent's possession with reference to the subject-matter of this action, and also the summons and complaint in the action.

HENRY L. BURNETT.

8 Sworn to before me this 14th day of November, 1899.

FREDERICK L. CAMPBELL,
[SEAL.] Notary Public, Kings County.

Certificate filed in N. Y. Co.

I certify that, as counsel for the petitioner, I have examined into all the matters set forth in the within petition and affidavit, and that I believe the same to be true.

Dated New York, Nov. 14th, 1899.

HENRY L. BURNETT,
United States Attorney, Counsellor of the said Circuit Court.

9 The President of the United States of America to the judges
of the supreme court of the State of New York, Greeting:

We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against John G. Ward, collector of internal revenue for the fourteenth district of the State of New York, by George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 15th day of November, 1899, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, together with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 14th day of November, in the year one thousand eight hundred and ninety-nine.

JOHN A. SHIELDS, Clerk.

HENRY L. BURNETT,

United States Attorney, Attorney for Defendant.

Allowed.

E. HENRY LACOMBE,

U. S. Circuit Judge.

10 (Endorsed :) U. S. circuit court. George T. Murdock, as executor, &c., versus John G. Ward, collector internal revenue, &c. Certiorari. Henry L. Burnett, United States attorney, attorney for defendant. I have this day personally served upon the clerk of the supreme court of the State of New York a duplicate of the within writ, at the same time showing the original. Wm. Henkel, U. S. marshal. Dated Nov. 14, 1899. U. S. circuit court. Filed Nov. 14, 1899. John A. Shields, clerk.

11 STATE OF NEW YORK:

Supreme Court, County of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament of Jane H. Sherman, Deceased, Plaintiff,

against

JOHN G. WARD, Collector of Internal Revenue for the Fourteenth District of the State of New York, Defendant.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and, in case of your failure to appear or answer

judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the county of New York.

Dated this 24th day of October, 1899.

PATTERSON, BULKELEY & VAN KIRK,
Plaintiff's Attorneys.

Office and P. O. address, 25 North Pearl street, Albany, N. Y.

12 In the Supreme Court of the State of New York, County of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament of Jane H. Sherman, Deceased, Plaintiff,

against

JOHN G. WARD, Collector of Internal Revenue for the Fourteenth District of the State of New York, Defendant.

The above-named plaintiff, by Patterson, Bulkeley & Van Kirk, his attorneys, for complaint in the above-entitled action, alleges and states upon information and belief that—

I. Jane H. Sherman, late of the village of Port Henry, in the county of Essex and State of New York, died on or about the 30th day of September, 1898, leaving certain property, and also leaving a last will and testament, in and by which said will this plaintiff, George T. Murdock, was appointed to be, and by due order of the surrogate of the county of Essex, in the State of New York, to whom jurisdiction in that behalf pertained, he has become and is, the sole executor of the said last will and testament of said Jane H. Sherman.

II. The plaintiff further alleges and states that the said Jane H. Sherman, deceased, upon her death left a very considerable amount of personal property, amounting to upwards of one million of dollars.

13 III. That the defendant, John G. Ward, at all the times mentioned in this complaint was and he is collector of internal revenue for the fourteenth district of the State of New York, having his office and official place of residence at the city of Albany, in the State of New York.

IV. That said John G. Ward, assuming to act as such collector, and assuming and pretending to act under and by virtue of the laws of the United States, which he assumed conferred authority upon him therefor, and particularly under and in pursuance of the provisions of an act of the Congress of the United States, commonly known as the "war-revenue law" of June 13, 1898, and being an act to provide ways and means to meet war expenditures, and for other purposes, passed by the Congress of the United States, and becoming a law on the 13th day of June, 1898, did, on or about the fourth day of April, 1899, by force and duress, exact, demand, and collect from this plaintiff and from the estate represented by him as such executor the sum of thirty-six thousand eight hundred and twenty-seven

JOHN G. WARD, U. S. COLLECTOR, ETC.

dollars and fifty-three cents (\$36,827.53), and upon the claim and under the pretext that the same was a lawful assessment as an internal-revenue tax upon the estate of said deceased and against this plaintiff, as executor of said deceased, on account of the legacies or distributive shares arising from personal property being in charge or trust of this plaintiff, as such executor as aforesaid, the properties assumed to be assessed for such tax being properties passing from

the said Jane H. Sherman.

14 V. That on or about the 8th day of April, 1899, this plaintiff, under protest, and protesting that he was not nor was the estate represented by him liable to pay said tax involuntarily and under duress because of the illegal demand made upon him by said defendant, did pay to the said defendant as such collector, as aforesaid, the said sum of \$36,827.53.

VI. That thereafter, believing the imposition of said tax and its collection to be unlawful, this plaintiff did appeal to the Commission of Internal Revenue and to the Treasury Department of the United States of America from the action and decision of said defendant in holding this plaintiff to be liable for the payment of said tax and in collecting the said tax in manner aforesaid, and did state and represent to said Commissioner that the collection of said tax was unlawful, and that the amount thereof should be refunded for the following reasons:

“First. The imposition of said tax was unconstitutional, unlawful, and void.

“Second. The imposition and collection of said tax deprived this deponent of his property and the estate represented by him of its property without due process of law.

“Third. That the law imposing said tax is not uniform, and does not afford equal protection of the laws to persons throughout the United States.

“Fourth. That the law imposing said tax denied and does deny to persons throughout the United States and within its jurisdiction the equal protection of the laws.

15 “Fifth. That the law under which said tax was imposed denies to this deponent the equal protection of the laws.

“Sixth. The tax so imposed is a direct tax, and is void because not apportioned among the States in proportion to their population and in accordance with the provisions of the Constitution of the United States.

“Seventh. If said tax is an impost, excise, or duty, the law imposing the same is unconstitutional and void because the tax levied is not uniform throughout the United States, as required by the Constitution of the United States; and

“Eighth. It is not within the province of the constitutional powers of the United States to levy a tax upon a right of inheritance or disposition by will, provided for by the laws of the State of New York.”

And this plaintiff did, in and by such appeal, claim that he was entitled to have the sum of money so paid and the amount thereof refunded, and he did then and there ask and demand the return of

the same moneys to him, and did appeal from the act of the said defendant as such collector in imposing said tax and exacting from the plaintiff payment of the amount thereof.

VII. On the 21st day of October, 1899, the said Commissioner of Internal Revenue and the Treasury Department of the United States, represented by the said Commissioner of Internal Revenue, did disallow the appeal of this plaintiff in the behalf above stated and did reject the claim of the plaintiff to have refunded the amount of the tax paid as aforesaid.

16 VIII. A very large proportion and at least one-third of the personal estate upon account of which said tax was exacted from and paid by this plaintiff consisted in the bonds and interest-bearing evidences of debt issued by the Government of the United States and which by contract between the United States and the holders thereof were and are not subject or liable to assessment or taxation, nor was or is this plaintiff subject or liable to assessment or taxation by means of his ownership or holding, as executor, as aforesaid, or otherwise of such bonds and certificates of indebtedness.

IX. This plaintiff claims and charges that by reason of the premises the amount of said tax has been unlawfully exacted from him as executor of said estate; that each and every of the grounds stated by him in the above-mentioned appeal to the said Commissioner of Internal Revenue states and represents a true and lawful reason why the imposition of said tax is unlawful and why the said tax should be refunded.

Wherefore this plaintiff demands judgment against the said defendant for the sum of thirty-six thousand eight hundred and twenty-seven dollars and fifty-three cents (\$36,827.53), with interest from the 8th day of April, 1899, with the costs of this action.

PATTERSON, BULKELEY & VAN KIRK,
Attorneys for Plaintiff, 25 North Pearl Street, Albany, N. Y.

17 STATE OF NEW YORK, }
County of Albany, }^{ss:}

Charles C. Van Kirk, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff in this action; that he has read the foregoing complaint and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true; that the grounds of his belief as to all matters stated in said complaint not upon his own knowledge are statements made to him by the plaintiff, his knowledge . transactions in court, and records and correspondence with reference to the subject-matter of the action; that the reason why this verification is not made by the plaintiff is that he resides in the county of Essex and is not now in the county in which his attorneys reside.

C. C. VAN KIRK.

Sworn to before me this 24th day of October, 1899.

FOSTER PRUYN,
Notary Public, Albany Co., N. Y.

18 (Endorsed:) Supreme court, State of N. Y. County of New York. George T. Murdock, as ex'r, &c., vs. John G. Ward, collector of internal revenue, &c. Summons and complaint. Patterson, Bulkeley & Van Kirk, attorneys for plaintiff, 25 North Pearl St., Albany, N. Y.

(Further endorsed:) U. S. circuit court, southern district of New York. George T. Murdock, as executor, &c., *versus* John G. Ward, internal-revenue col., &c. Petition for removal. Henry L. Burnett, United States attorney. U. S. circuit court. Filed Nov. 14, 1899. John A. Shields, clerk.

19 United States Circuit Court, Southern District of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament }
of Jane H. Sherman, Deceased, Plaintiff, }
against }
JOHN G. WARD, Collector of Internal Revenue for the Fourteenth }
District of the State of New York, Defendant. }

The defendant above named, appearing by Henry L. Burnett, Esq., United States attorney for the southern district of New York, his attorney, hereby demurs to the complaint herein upon the ground that it appears on the face of said complaint that the same does not state facts sufficient to constitute a cause of action.

Dated New York city, N. Y., November 14th, 1899.

HENRY L. BURNETT,
*United States Attorney for the Southern District
of New York, Attorney for the Defendant,
Room 50, Post-office Building, New York City, N. Y.*

(Endorsed:) U. S. circuit court, southern district of New York. George T. Murdock, as executor of the last will, etc., of Jane H. Sherman, deceased, *versus* John G. Ward, collector of internal revenue for the 14th district of the State of N. Y. Demurrer. Henry L. Burnett, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted. Dated New York, Nov'r 14th, 1899. Patterson, Bulkeley & Van Kirk, attorneys for plaintiff. Demurrer sustained Nov. 14, 1899. E. H. L., U. S. C. J. U. S. circuit court. Filed Nov. 14, 1899. John A. Shields, clerk.

20 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second judicial circuit, held at the Federal court-house, in the city of New York, on the 14th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: Hon. E. Henry Lacombe, circuit judge.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament
of Jane H. Sherman, Deceased, Plaintiff,

vs.

JOHN G. WARD, Collector of Internal Revenue for the Fourteenth
District of the State of New York, Defendant.

This cause coming regularly on for trial upon the demurrer filed November 14th, 1899, to the complaint filed on the 14th day of November, 1899, and after hearing Henry L. Burnett, Esq., United States attorney for the southern district of New York, and counsel for the defendant, in support of said demurrer, and Charles E. Patterson, of Patterson, Bulkeley & Van Kirk, of counsel for the plaintiff, in opposition thereto, and after due deliberation having been had thereon, it is—

Ordered that the demurrer interposed by the defendant to the complaint in this action, as aforesaid, be, and the same is hereby, sustained; and it is further—

Ordered that the said complaint be, and the same is hereby, dismissed, with costs to the defendant to be adjusted in the general manner, and the clerk is hereby directed to enter judgment herein in accordance herewith.

E. HENRY LACOMBE,
Circuit Judge.

(Endorsed:) U. S. circuit court, southern dist. of New York. George T. Murdock, as executor of the last will, etc., of Jane H. Sherman, deceased, *versus* John G. Ward, collector of internal revenue for the 14th district of the State of New York. Order sustaining demurrer. Henry L. Burnett, United States attorney, attorney for defendant. U. S. circuit court. Filed Nov. 17, 1899. John A. Shields, clerk.

22 United States Circuit Court, Southern District of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament
of Jane H. Sherman, Deceased, Plaintiff,

against

JOHN G. WARD, Collector of Internal Revenue for the Fourteenth
District of the State of New York, Defendant.

The issues in the above-entitled cause having been joined by the defendant filing a demurrer to the complaint on the 14th day of November, 1899, and an order having been entered by the Honorable E. Henry Lacombe, circuit judge, holding the court, on the 14th day of November, 1899, directing that the said demurrer be sustained and dismissing the complaint, with costs to the defendant, to be taxed, and directing entry of judgment for said costs, and the costs having been taxed by the clerk at the sum of ten dollars:

Now, on motion of Henry L. Burnett, Esq., United States attorney, appearing for defendant, it is—

Adjudged that the said demurrer filed in this action by the said

defendant to the complaint of plaintiff herein be, and is hereby, sustained, and that the said complaint of the plaintiff be, and is hereby, dismissed; and it is further—

Adjudged that the above-named defendant recover of the above-named plaintiff the sum of ten dollars, his costs as taxed,
23 and that judgment be docketed in favor of said defendant and against the said plaintiff therefor, and that execution be issued against the said plaintiff on said judgment.

E. H. LACOMBE,
U. S. Circuit Judge.

Dated New York city, N. Y., Nov'r 14th, 1899.

BY THE COURT.

(Endorsed:) U. S. circuit court, southern district of New York. George T. Murdock, as executor of the last will, etc., of Jane H. Sherman, deceased, *versus* John G. Ward, collector of internal revenue for the 14th district of the State of New York. Judgment on demurrer. Henry L. Burnett, United States attorney, attorney for defendant. U. S. circuit court. Filed Nov. 16, 1899. John A. Shields, clerk.

24 Supreme Court of the United States, October Term, 1899.

GEORGE T. MURDOCK, as Executor of the
Last Will and Testament of Jane H.
Sherman, Deceased, Plaintiff in Error, }
against } Assignment of Errors.
JOHN G. WARD, Collector of Internal Rev-
enue for the Fourteenth District of the
State of New York, Defendant in Error.

Now comes George T. Murdock, executor of the last will and testament of Jane H. Sherman, deceased, by his counsel, and respectfully represents that he feels himself to be aggrieved by the proceedings and judgment of the circuit court of the United States for the southern district of New York, in the second judicial circuit, in the above-entitled cause, and assigns error thereto, as follows:

I. The court erred in sustaining the demurrer and dismissing the appeal of plaintiff herein.

II. The court erred in refusing to find, as was claimed by the plaintiff in error, that the imposition of the tax described in the complaint against the plaintiff in error because of his ownership as executor of the last will and testament of Jane H. Sherman, deceased, of the property mentioned in the complaint, was unconstitutional, unlawful, and void.

III. The said court erred in not deciding that the imposition and collection of said tax deprived this deponent of his property and the estate represented by him of its property without due process of law.

IV. Such circuit court erred in refusing to find that the law imposing said tax is not uniform and does not afford equal protection of the laws to persons throughout the United States.

V. The said circuit court erred in refusing to find that the law imposing said tax denied and does deny to persons throughout the United States and within its jurisdiction the equal protection of the laws.

VI. The court erred in refusing to find that the law under which said tax was imposed denies to the plaintiff in error the equal protection of the laws.

VII. The court erred in refusing to find that the tax so imposed is a direct tax and is void because not apportioned among the States in proportion to their population and in accordance with the provisions of the Constitution of the United States.

VIII. The said court erred in refusing to find that if said tax is an impost, excise, or duty, the law imposing the same is unconstitutional and void because the tax levied is not uniform throughout the United States, as required by the Constitution of the United States.

IX. The court erred in refusing to find that it is not within the province of the constitutional powers of the United States to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York.

X. The court erred in refusing to find that in so far as the estate of the deceased consisted of the Government bonds of the United States mentioned in said complaint the Congress had not right or authority to impose or assess any tax upon the same, and in refusing to find that the plaintiff in error was entitled to recover back from the defendant in error in this action the amount of the tax mentioned in his complaint and which was assessed against the plaintiff in error because of his ownership as executor as aforesaid of such bonds of the Government of the United States.

XI. The court erred in not overruling the demurrer to the
26 said complaint.

Wherefore the said plaintiff in error prays this honorable court to examine and correct the errors assigned and for a reversal of the judgment of the circuit court of the United States for the southern district of New York entered in the above-entitled cause.

CHARLES E. PATTERSON AND
ALPHEUS T. BULKELEY,
Attorneys for Plaintiff in Error.

(Endorsed:) United States circuit court, southern district of New York. George T. Murdock, as executor, &c., plff in error, against John G. Ward, collector of internal revenue, 14th dist. of N. Y. Assignment of errors. Charles E. Patterson & Alpheus T. Bulkeley, attorneys for plff in error, 25 North Pearl street, Albany, N. Y. A copy of the within paper has been this day received at this office. Nov. 17, 1899. Henry L. Burnett, U. S. attorney. U. S. circuit court. Filed Nov. 17, 1899. John A. Shields, clerk.

27 United States Circuit Court, Southern District of New York.

GEORGE T. MURDOCK, as Executor of the Last Will and Testament of Jane H. Sherman, deceased, }
 against }
JOHN G. WARD, Collector of Internal Revenue for the 14th District of the State of New York. }

Know all men by these presents that we, George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, as principal, and the United States Fidelity & Guaranty Company, Baltimore, Maryland, having a place of business in the city of New York, as surety, are held and firmly bound unto John G. Ward, collector of internal revenue for the 14th district of the State of New York, in the full and just sum of five hundred dollars, to be paid to the said obligee, his certain attorney, successors, or assigns; to which payment, well and truly to be made, I bind myself, my successors and assigns, and the said company binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this 15th day of November, in the year of our Lord eighteen hundred and ninety-nine.

Whereas the above-named George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, has prosecuted a writ of error to the Supreme Court of the United States to reverse a decree rendered in the above-entitled action by the judge of the circuit court of the United States for the southern district of New York :

28 Now, therefore, the condition of the above obligation is such that if the said George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

GEO. T. MURDOCK,
*As Executor of the Last Will & Testament
of Jane H. Sherman, Deceased.*
UNITED STATES FIDELITY &
GUARANTY COMPANY OF
BALTIMORE, MARYLAND,
By ALPHEUS T. BULKELEY,
JOHN V. McHARG,
Attorneys-in-fact.

Sealed and delivered and taken and acknowledged this 15th day of November, 1899.

H. B. WILLARD,
Notary Public for Essex County.

Approved as a supersedeas bond.

STATE OF NEW YORK,
Northern District of New York, County of Essex, }^{ss:}

On this fifteenth day of November, 1899, before me, the subscriber, personally appeared George T. Murdock, to me known and known to me to be the individual described and who executed the foregoing instrument, and who acknowledged the execution thereof.

H. B. WILLARD,
Notary Public for Essex County.

29 CITY OF ALBANY, }
County of Albany, State of New York, }^{ss:}

On this 16th day of November, 1899, before me personally appeared Alpheus T. Bulkeley & John V. McHarg, attorneys-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland, and duly authorized to transact business in the State of New York, with whom I am personally acquainted, who, being by me severally duly sworn, said that they resided in the city of Albany, N. Y.; that they are the attorneys-in-fact of the United States Fidelity and Guaranty Company; that they knew the corporate seal of said company; that the seal affixed to the annexed instrument is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that they signed said instrument as attorneys-in-fact of said company by like authority; and the said Edwin G. Day further said that he is acquainted with Alpheus T. Bulkeley & John V. McHarg and knew them to be the attorneys-in-fact of said company, and that the signature of the said Alpheus T. Bulkeley & John V. McHarg subscribed to the said instrument is the genuine handwriting of the said Alpheus T. Bulkeley & John V. McHarg, and was thereto subscribed by the like order of the said board of directors and in the presence

him, the said Edwin G. Day.

EDWIN G. DAY,
Notary Public, Albany Co., N. Y.

At a special meeting of the board of directors of the United States Fidelity and Guaranty Company, held at the office of the company in the city of Baltimore, State of Maryland, on the 29th day of January, A. D. 1898, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously—

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York, Alpheus T. Bulkeley & John V. McHarg, the attorneys-in-fact of the United States Fidelity and Guaranty Company for the counties of Albany and Schoharie, Delaware & Otsego, in the State of New York, be, and each of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for and on behalf of this company, and to attach thereto the seal of the company, the same to be

attested by either one of the said attorneys-in-fact above named as occasion may require.

CITY OF ALBANY,
County of Albany, State of New York, }^{ss:}

We, Alpheus T. Bulkeley & John V. McHarg, attorneys-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under our hands and the seal of the company, at Albany, this 16th day of November, 1899.

ALPHEUS T. BULKELEY,
JOHN V. MCHARG,

Attorneys-in-fact.

30 (Endorsed:) United States circuit court, southern district of New York. Geo. T. Murdock, as ex'r of the last will and testament of Jane H. Sherman, deceased, vs. John G. Ward, collector of internal revenue for the 14th district of New York. Undertaking on writ of error. Charles E. Patterson, Alpheus T. Bulkeley, att'ys for plff in error. A copy of the within paper has been this day received at this office. Nov. 17, 1899. Henry L. Burnett, U. S. attorney. Approved as to form, and also as to sufficiency of sureties, with reservation, however, to the defendant in error of the right at any time to examine the proper officers of the surety company, under oath, touching its assets, liabilities, and financial condition generally. E. Henry Lacombe, U. S. circuit judge. U. S. circuit court. Filed Nov. 17, 1899. John A. Shields, clerk.

31 UNITED STATES OF AMERICA, ^{ss:}

To John G. Ward, United States collector of internal revenue, fourteenth district of the State of New York, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein George T. Murdock, as executor of the last will and testament of Jane H. Sherman, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice done to the parties in that behalf.

Given under my hand, in the city of New York, in the district above named, on the 17 day of November, 1899, and of the Independence of the United States the one hundred and twenty-fourth.

E. HENRY LACOMBE,
— *United States Circuit Court, Second Circuit.*

32 [Endorsed:] E. & A. B. 1718. United States circuit court,
northern district of New York. George T. Murdock, as executor,
&c., plff in error, against John G. Ward, collector of internal
revenue, 14th dist. of N. Y., def't in error. Original. Citation.
Charles E. Patterson & Alpheus T. Bulkeley, attorneys for plff in
error, 25 North Pearl street, Albany, N. Y. Due and personal
service of cop- of the within — admitted this — day of —, 189—
— —, attorney for —. A copy of the within paper has been
this day received at this office. Nov. 17, 1899. Henry L. Burnett,
U. S. attorney. U. S. circuit court. Filed Nov. 17, 1899. John A.
Shields, clerk. 10 pd.

Endorsed on cover: File No., 17,572. S. New York C. C. U. S.
Term No., 458. George T. Murdock, as executor of Jane H. Sherman,
deceased, plaintiff in error, *vs.* John G. Ward, as U. S. collector
of internal revenue. Filed November 23d, 1899.

JOHN D. BREKMAN, PLAINTIFF IN ERROR,

THE UNITED STATES,

**IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.**

FILED NOVEMBER 22, 1869.

(17,573.)

(17,573.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 459.

GEORGE D. SHERMAN, PLAINTIFF IN ERROR,

v.s.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF NEW YORK,

INDEX.

	Original.	Print.
Writ of error	1	1
Petition	3	1
Exhibit "A"—Will of Jane A. Sherman	9	4
" B "—Schedule of legacies	22*	12
Proof of service of petition.....	26	12
Defendant's appearance.....	27	13
Demurrer.....	29	13
Order sustaining demurrer.....	31	14
Judgment	33	15
Petition for writ of error	36	15
Bond on writ of error.....	38	16
Assignment of errors.....	42	18
Citation and proof of service	46	20
Clerk's certificate.....	49	21



1 UNITED STATES OF AMERICA, 88:

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of New York, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of the plea which is in the said circuit —, before you, between George D. Sherman, plaintiff in error, and The United States, defendant in error, a manifest error hath happened, to the great damage of the said George D. Sherman, plaintiff in error, as by his complaint appears, we, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington within thirty days from the date hereof, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, the 20th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal of the U. S. Circuit Court, Northern District N. Y.]

W. S. DOOLITTLE,
*Clerk of the United States Circuit Court, Second
Circuit, Northern District of New York.*

Allowed by—

WM. J. WALLACE,
United States Circuit Judge.

2 [Endorsed:] United States circuit court, northern district of New York. George D. Sherman, pl'tff in error, against The United States, def't in error. Original writ of error. Charles E. Patterson and Alpheus T. Bulkeley, attorneys for pl'tff in error, 25 North Pearl street, Albany, N. Y. Due and personal service of — cop of the within — admitted this — day of —, 189—. — — —, attorney for —. U. S. circuit court, N. D. of N. Y. Filed Nov. 20, 1899. W. S. Doolittle, clerk.

3 To the circuit court of the United States for the northern district of New York :

George D. Sherman presents this his petition to this honorable court and states that he resides at Port Henry, in the county of Essex, in the said northern district of New York; and he further states as follows :

I. This petitioner is a son, heir-at-law, and next of kin of Jane H. Sherman, deceased.

II. That said Jane H. Sherman died on or about the 30th day of September, 1898, being at the time of her death a citizen of the United States and a resident of the village of Port Henry, in the county of Essex and State of New York.

III. That at the time of her death said Jane H. Sherman left a last will and testament, of which a copy is hereto annexed, marked "A."

IV. At the time of her death the said Jane H. Sherman was possessed of a considerable personal estate and of the value of one million two hundred and thirty-three thousand five hundred and seventy-one dollars (\$1,233,571), a considerable portion of which, to wit, at least one-third thereof, consisted of what are commonly called Government bonds—that is to say, bonds issued by the Government of the United States under the authority of acts of Congress—and certificates of indebtedness of the Government of the United States issued under the provisions of act of Congress, bearing interest, and which bonds or certificates of indebtedness this petitioner is advised and believes, and charges the fact to be, are not subject to assessment or taxation by the United States or by any

State, and there is, by virtue of the acts of Congress directing the issuing of such bonds and certificates of indebtedness, a contract between the Government of the United States and the holders of such bonds and certificates of indebtedness that the same are non-taxable and non-assessable for the purposes of taxation.

V. By virtue of the nomination in said will of George T. Murdock to be the executor thereof, the said Murdock has become and by virtue of the appointment of the surrogate of the county of Essex, to whom jurisdiction in that behalf pertained, he is sole executor of said will, and trustee of the estate passing from said Jane H. Sherman.

VI. Upon his information and belief your petitioner further alleges that after the said Murdock had become executor of said will and trustee of the estate of said Jane H. Sherman, under and by virtue of the provisions of said will, John G. Ward, collector of internal revenue for the fourteenth district of New York, exacted and demanded from the said Murdock the payment of a duty or tax claimed to be imposed upon said Murdock, as such executor, as aforesaid, under and by virtue of section 29 of an act of the Congress of the United States entitled "An act to provide ways and means to meet war expenditures, and for other purposes," passed the 13th day of June, 1898, and the said Murdock, as such executor, as aforesaid, by reason of such demand and under duress and threat of the penalties enumerated in the said act, acceded to such demand and exactation of the said collector, and did pay to the said collector, on account of the assessment made against him as such executor, in accordance with the terms and provisions of said act of Congress, the sum of \$36,827.53,

5 of which the sum of \$8,969.02 was, because of the provisions of said act and under pretence of the authority thereof and because of the demands of the Commissioner of Internal Revenue

and rulings made by him in like cases, taken and deducted by said executor from the income due and payable to your petitioner, under and by virtue of the provisions of said will, from the shares of said estate, including Government bonds set apart by virtue of the provisions of said will as the share of said estate from which the income is payable to your petitioner during his life; and if the said payment was lawfully required to be made by said executor, he, the said executor, was authorized by said act to pay the same from the funds of said estate, and, in fact, he did pay the same from the income of said estate payable to your petitioner, and deducted the same therefrom.

VII. Your petitioner upon his information and belief alleges and states that the sum of money so collected by said collector and by such executor paid, to wit, the said sum of \$36,827.53, was by said collector duly paid over to the Treasury of the United States, and has been accepted and received and is held by the United States; that said executor was by said collector of internal revenue required to make and he did make a sworn return of the value of said estate upon a blank furnished by the said collector, and of which a copy is hereto annexed, marked "B."

VIII. Your petitioner further states and upon his information and belief alleges that the exaction of the payment of said sum of money, or duty, or tax by said collector from the said executor and the payment of the same by said executor to said collector for the United States were and are unlawful and have conferred and do confer upon the United States no title to the same, but the United

States has unlawfully taken and withheld and does now withhold from your petitioner the said sum of \$8,969.02 under the circumstances and in manner aforesaid, and which sum is part of the moneys which your petitioner was and is entitled to receive and have free from tax or duty under and by virtue of the will of said Jane H. Sherman.

IX. Your petitioner is advised, and upon his information and belief he charges the fact to be, that the imposition of said tax was unconstitutional, unlawful, and void for the following reasons:

First. The imposition and collection of said tax deprived your petitioner of his property and the estate in which he is interested of its property without due process of law.

Second. That the law imposing said tax is not uniform and does not afford equal protection of the laws to persons throughout the United States.

Third. That the law imposing said tax denied and does deny to persons throughout the United States and within its jurisdiction the equal protection of the laws.

Fourth. That the law under which said tax was imposed denies to your petitioner the equal protection of the laws.

Fifth. The tax so imposed is a direct tax and is void because not apportioned among the States in proportion to their population and in accordance with the provisions of the Constitution of the United States.

Sixth. If said tax is an impost, excise, or duty, the law imposing

the same is unconstitutional and void because the tax levied is not uniform throughout the United States, as required by the Constitution of the United States.

Seventh. It is not within the province of the constitutional powers of the United States or of the Congress to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York, or to create classes which may be lawfully regarded in the imposition of taxes, or to make distinction between classes by whom taxes must be paid or upon whom taxes may be imposed, or to recognize for the purposes of taxation any classes that may have been created by the State of New York, or to require the payment of a larger or different amount of tax from or imposed upon a legacy or a legatee because of the greater wealth of the donor of such legacy than is required when the legacy is a gift of a testator of smaller means.

Ninth. Because the said act is in other respects unconstitutional and void.

Tenth. And in so far as the said tax has been imposed upon or collected from said executor by reason of his ownership as executor of the interest in the estate of said deceased, which consists of the Government bonds above mentioned, the defendant has not right or authority to impose or assess any tax whatever upon the same.

X. Upon his information and belief your petitioner further alleges and states that said executor heretofore appealed to the Commissioner of Internal Revenue of the Treasury Department of the United States from the act and requirements of said collector in demanding, collecting, and receiving from said executor said tax or duty upon said estate; but said commissioner has overruled said appeal and rejected the demand of said executor that said tax be refunded.

XI. Your petitioner further states that because of the premises he claims that he have and recover from the United States the sum of eight thousand nine hundred and sixty-nine dollars and two cents (\$8,969.02), together with interest thereon from the time of the filing of this petition, besides the cost of this action, and he prays this honorable court for a judgment or decree upon the facts and

law that he have and recover the said sum of eight thousand nine hundred and sixty-nine dollars and two cents (\$8,969.02) and interest from the time of filing this petition (such principal and interest not, however, to exceed in the aggregate ten thousand dollars), together with the costs of this proceeding.

GEORGE D. SHERMAN, *Petitioner.*

PATTERSON, BULKELEY & VAN KIRK,

*Attorneys for Petitioner, 25 North Pearl Street,
Albany, N. Y.*

I, Jane H. Sherman, of Port Henry, Essex county, New York, mindful of the uncertainty of life, and being desirous of making a

disposition of my property in case of death, do make publish and declare this instrument as and for my last will and testament, as follows—

First clause: I direct my executors, hereinafter named, to pay and discharge all my just debts and funeral expenses as soon as practicable after my decease.

Second clause: I give, devise and bequeath to my son, George D. Sherman, all my interest in the real estate situated in the county of Clinton, New York, which I own jointly with one James H. Allen, known and distinguished as the "Pulp Mill property," with all the appurtenances thereunto belonging, including my interest in the personal property therein or thereat and the business connected therewith.

Third clause: I give, devise and bequeath to my grandson, George K. Sherman, the house and lot now used and occupied by me as a residence in the village of Port Henry, New York, with all the appurtenances thereunto belonging, including all my household furniture and utensils, silverware, pictures, ornamental articles, library, beds, bedding and carpets in said house, and also including all my horses, harnesses, carriages and sleighs in the barn on said lot.

I also give, devise and bequeath to my grandson, George K. Sherman, that certain other piece of real estate situated in the town of Moriah, New York, on which William H. Clough resides, known as the "Brook farm," with all the appurtenances thereunto belonging, including all the personal property of every kind on and used in connection with said farm.

10 Fourth clause: I give, devise and bequeath to my grandson, John R. Sherman, my house and lot in the village of Saratoga Springs, New York, which I have used for the past few years in connection with my late husband, George R. Sherman, as a summer residence, with all the appurtenances thereunto belonging, including furniture, carpets, silverware, ornamental articles, and all other personal property therein, together with the harnesses, carriages, sleighs and all other personal property in the barn on said lot. I also give and bequeath to my said grandson, John R. Sherman, all of my interest in the personal property which I own jointly with one James H. Allen in the "Cedar Point store," so called, in the village of Port Henry, New York, and in the business run or conducted therewith.

Fifth clause: I give and bequeath to my sister, Harriet M. Douglass, the sum of twenty thousand dollars (\$20,000).

Sixth clause: I give and bequeath to my cousin, Nellie M. Douglass, the sum of five thousand dollars (\$5,000).

Seventh clause: I give and bequeath to my friend, George T. Murdock, the sum of five thousand dollars (\$5,000).

Eighth clause: I give and bequeath to my nephew, John C. Douglass, the sum of one thousand dollars (\$1,000).

Ninth clause: I give and bequeath to my niece, Alice M. Slavin, the sum of one thousand dollars (\$1,000).

Tenth clause: I give and bequeath to my niece, Theda S. Douglass, the sum of one thousand dollars (\$1,000).

Eleventh clause: I give and bequeath to my niece, Mrs. Alfred Dustensmith, the sum of one thousand dollars (\$1,000).

Twelfth clause: I give and bequeath to Laura Dennis the sum of one thousand dollars (\$1,000).

11 Thirteenth clause: I give and bequeath to Adaline Oleott the sum of one thousand dollars (\$1,000).

Fourteenth clause: I give and bequeath to Bezie Burges the sum of five hundred dollars (\$500).

Fifteenth clause: I give and bequeath to Woodard Pratt the sum of five hundred dollars (\$500).

Sixteenth clause: I give and bequeath to the Sherman Collegiate Institute, at Moriah, New York, the sum of twenty thousand dollars (\$20,000).

Seventeenth clause: I give and bequeath to the Saratoga hospital, at Saratoga, New York, the sum of five thousand dollars (\$5,000).

Eighteenth clause: I give and bequeath to my executors, herein-after named, and to their successor or successors, in trust, for the Moriah Cemetery Association, the sum of twenty-five hundred dollars (\$2,500). The said sum of twenty-five hundred dollars to be invested by my said executors, their successor or successors, and the principal sum, together with the income thereon or any part thereof, to be paid to said association for the purpose of keeping up and maintaining said cemetery as it now exists, in the following manner, viz: One hundred dollars of said twenty-five hundred dollars, together with the income on the whole sum not theretofore paid to said association, each and every year, commencing with the first day of May occurring after my decease, until the whole of said twenty-five hundred dollars and the income thereon shall be paid to said association.

Nineteenth clause: I give and bequeath to my executors, herein-after named, and to their successor or successors, in trust, for the First Presbyterian church, at Port Henry, New York, the sum of six thousand dollars (\$6,000).

12 The said sum of six thousand dollars to be invested by my said executors, their successor or successors, and the said six thousand dollars, together with the income thereon or any part thereof, to be paid to said church in the following manner, viz: Two hundred fifty dollars of said six thousand dollars, together with the income on the whole sum not theretofore paid to said church, each and every year, commencing with the first day of January occurring after my decease, until the whole of said six thousand dollars and the income thereon shall be paid to said church.

Twentieth clause: I give and bequeath to my executors, herein-after named, and to their successor or successors, in trust, for my niece, Mary E. Judd, the sum of twelve thousand dollars (\$12,000). The said sum of twelve thousand dollars to be invested by my said executors and their successor or successors, and the said twelve thousand dollars, together with the income thereon or any part

thereof, to be paid to my said niece in the following manner, viz: one hundred twenty-five dollars of said twelve thousand dollars, together with the income on the whole sum not theretofore paid to her, each and every three months, commencing with the first day of the third month occurring after my decease, until the whole of said twelve thousand dollars and the income thereon shall have been paid to her. And, in the event of the death of my said niece before said twelve thousand dollars and the whole thereof, including any income thereon, shall have been fully paid to her, then and in such case whatever part or portion of said twelve thousand dollars, including any income thereon, at the time of her death and held by my said executors, their successor or successors,

I give and devise the same to the lawful children of my said
13 niece, issues of her body, then living, absolutely, share and share alike, their heirs and assigns forever.

Twenty-first clause: I give and bequeath to my executors, hereinafter named, and to their successor or successors in trust, for my sister-in-law, Sabra B. Douglass, the sum of six thousand dollars (\$6,000). The said sum of six thousand dollars to be invested by my said executors and their successor or successors, and the said six thousand dollars, together with the income thereon or any part thereof, to be paid to my said sister-in-law in the following manner, viz:

Sixty-two dollars and fifty cents (\$62.50) of said six thousand dollars, together with the income on the whole sum not theretofore paid to her, each and every three months, commencing with the first day of the third month occurring after my decease, until the whole of said six thousand dollars and the income thereon shall have been paid to her. And, in the event of the death of my said sister-in-law before said six thousand dollars and the whole thereof, including any income thereon, shall have been fully paid to her, then and in such case whatever part or portion of said six thousand dollars, including any income thereon shall remain unpaid at the time of her death and held by my said executors their successor or successors, I give and devise the same absolutely to my son, George D. Sherman, my grandson, George K. Sherman, and my grandson John R. Sherman, share and share alike, their heirs and assigns forever.

Twenty-second clause: I give and bequeath to my executors, hereinafter named, and to their successor or successors, in trust, for my daughter-in-law, Jennie L. Sherman, the sum of thirty thousand dollars (\$30,000). The said sum of thirty thousand dol-

14 lars to be invested by my said executors and their successor or successors, and the said thirty thousand dollars, together with the income thereon or any part thereof, to be paid to my said daughter-in-law in the following manner, viz: Two hundred fifty dollars (\$250.00) of said thirty thousand dollars, together with the income on the whole sum not theretofore paid to her, at the end of each and every three months, commencing with the first day of the third month occurring after my decease, until the whole of said thirty thousand dollars and the income thereon

shall have been paid to her. And, in the event of the death of my said daughter-in-law before said thirty thousand dollars and the whole thereof, including any income thereon, shall have been fully paid to her, then and in such case whatever part or portion of said thirty thousand dollars, including any income thereon, shall remain unpaid at the time of her death and held by my said executors, their successor or successors, I give and devise the same absolutely to my son, George D. Sherman, my grandson, George K. Sherman, and my grandson, John R. Sherman, share and share alike, their heirs and assigns forever.

Twenty third clause: I give and bequeath to my daughter-in-law, Jennie L. Sherman, twenty (20) shares of the capital stock of the First national bank, of Port Henry, New York.

Twenty-fourth clause: All the rest, residue and remainder of my property, both real and personal, legal and equitable, by whatsoever name known and wheresoever situated, which I may die seized or possessed, or to which I may be entitled at the time of my decease not hereinbefore given or disposed of, I give, devise and bequeath to my executors and trustees, hereinafter named, and to their successors, in trust nevertheless, for the following uses and purposes, viz:

15 First: To pay to my son, George D. Sherman, on the first day of January in each year, commencing on the first day of January after my decease, the full and equal one-third part and portion of the whole net income, rents and profits derived from said trust estate.

Second: To pay my grandson, George K. Sherman, during the lifetime of my said son, George D. Sherman, the full and equal one-third part or portion of the whole net income, rents and profits of said trust estate, to be paid in the manner and at the time specified in the item designated "First" of this clause.

Third: To pay to my grandson, John E. Sherman, during the lifetime of my said son, George D. Sherman, the full and equal one-third part or portion of the whole net income, rents and profits of said trust estate, to be paid in the manner and at the time specified in the item designated "First" of this clause.

Fourth: Upon the death of my said son, George D. Sherman, my said two grandsons him surviving, to pay to my said grandson, George K. Sherman, until he shall arrive at the age of fifty years, the full and equal moiety or half part and portion of the whole net income, rents and profits of said trust estate: and to pay to my said grandson, John R. Sherman the remaining moiety or half part of said net income, rents and profits: each to be paid in the manner and at the time specified in the item designated "First" of this clause.

Fifth: To pay over, assign, transfer and deliver absolutely, in fee-simple, to my said grandson, George K. when he shall attain the age of fifty years, and in case my said son, George D., shall at such

time have departed this life, and, if not, then upon his decease thereafter, the full and equal half part and share of the said trust estate. And in the event that my said grandson,

George K., shall not survive my said son, George D., or, him surviving, shall not attain the age of fifty years, then and in such case and at and upon the death of both my said son, George D., and my said grandson, George K., the said share and interest of my grandson, George K., in said estate, as hereinbefore designated and determined, shall pass to, vest in and be paid over, assigned, transferred, conveyed and delivered to such person or persons or objects, in such manner and with such rights, interests, limitations, conditions and estate as he may require, direct, create, declare and appoint by his valid last will and testament—or, in default thereof, to his lawful children and issue, him surviving, their heirs and assigns forever, share and share alike.

Sixth: To pay over, assign, transfer, convey and deliver absolutely, in fee-simple, to my said grandson, John R., when he shall attain the age of fifty years, and in case my said son, George D., shall at such times have departed this life, and, if not, then at and upon his decease thereafter, the remaining full and equal moiety or half part of said trust estate. And, in the event that my said grandson, John R., shall not survive my said son, George D., or, him surviving, shall not attain the age of fifty years, then and in such case and at and upon the death of both my said son, George D. and my said grandson, John R., the said share and interest of the said John R. in said estate, as hereinbefore designated and determined, shall pass to, vest in and be paid over, assigned, transferred, conveyed and delivered to such person or persons or objects, and with such rights, interests, limitations, conditions and
17 estate as he may require, direct, create, deliver and appoint by his valid last will and testament, or, in default thereof, to his lawful children and issue him surviving, their heirs and assigns forever, share and share alike.

Seventh: In the event of the death of either of said grandsons during the lifetime of my said son, George D., then and in such case to pay the one equal moiety or half part of the whole net income, rents and profits of said trust estate to my said son during his lifetime, and the other moiety or half part thereof to the survivor of said grandsons, each to be paid in the manner and at the time specified in item designated "First" of this clause. But if either of my said grandsons shall be deceased intestate, without lawful issue him surviving at the time of the decease of my said son, George D., then and in such case at, upon and after the death of my said son, George D., to pay to the survivor of my said grandsons until he shall attain the age of fifty years the whole net income, rents and profits of said trust estate at the time and in the manner specified in the item designated "First" of this clause, and at and upon the said surviving grandson attaining the age of fifty years the whole of said trust estate shall pass to, vest in and be paid over, assigned, transferred, conveyed and delivered to him. And, in the event that said surviving grandson, after the decease of my said son, George D., shall not attain the age of fifty years, then and in such case the whole of said trust estate shall immediately on the death of said surviving grandson pass to, vest in and be paid over, assigned,

transferred, conveyed and delivered to such person or persons or objects, in such manner and with such rights, interests, limitations, conditions and estate as he may require, direct, create, declare
18 and appoint by his valid last will and testament, or, in default thereof, to his heirs-at-law and next of kin.

Eighth: In the event of the death of both of my said grandsons intestate, and without lawful issue they or either of them surviving, prior to the death of my said son, George D., then and in such case to pay to my said son, George D., during his life the whole net income, rents and profits of said trust estate, at the time and in the manner specified in item designated "First" of this clause, and at and upon his death out of said trust estate to pay to the Sherman Collegiate Institute, at Moriah, New York, the sum of twenty thousand dollars (\$20,000): to pay to the Sherman Free Library, at Port Henry, New York, the sum of ten thousand dollars (\$10,000) and all the rest, residue and remainder of said trust estate shall pass to, vest in and be paid over, assigned, transferred, conveyed and delivered to my heirs-at-law and next of kin, their heirs and assigns forever, in the same proportion or share in all respects as they and each of them would take or receive the same under the statutes of the State of New York in case I had died intestate.

Twenty-fifth clause: I nominate, constitute and appoint George T. Murdock, of Port Henry, New York, and James H. Allen, of Port Henry, New York, executors of this my last will and trustees of the trust estates herein created. And, should either of said trustees refuse or be unable to act as such, or resign his trusteeship, the said trusts, together with the estates and powers hereinbefore granted to the trustees, shall vest in the trustees who shall act. And, should either of said trustees die, the said trust estate, trusts and powers
19 shall vest in the survivor; and, in case of the death of both of said trustees, or of the inability of both to act or refuse to

serve, then and in such case the said trust estate, trusts and powers shall vest in such person or persons as may be appointed by the supreme court of the State of New York to succeed them. It is my will and I hereby fix the compensation which my said executors shall receive as follows, viz: The said George T. Murdock shall be entitled to receive, and his compensation is hereby fixed at the sum of three thousand dollars (\$3,000) per annum. Said sum of three thousand dollars (\$3,000) to be paid to him on the first day of January of each and every year, so long as he shall act: and, in addition thereto, and as extra compensation, the said George T. Murdock, for and during the time he shall act as such executor or trustee, shall have the free use of the house and lot which he now occupies in the village of Port Henry, New York. The said James H. Allen shall be entitled to receive, and his compensation is hereby fixed at the sum of two thousand dollars (\$2,000) per annum to be paid to said James H. Allen on the first day of January of each and every year, so long as he shall act. The said sum hereby fixed and directed to be paid to my said executors and trustees, to be paid to and received by each of them in lieu of any

and all fees and commissions which they or either of them might become entitled to receive as executors or trustees under this my last will and testament. I hereby authorize and empower my said executors to sell, convey and dispose of, either at public or private sale, and at such times and in such manner and for such sum or sums as to them in the exercise of their best judgment may seem for the best interests of my estate, all or any part of my real or personal estate not hereinbefore specifically devised or disposed of.

20 I further will and direct that neither of my said executors or trustees shall be required to give any bonds as such.

Twenty-sixth clause: It is my will, and I hereby direct that, if for any reason the twenty-fourth clause of this will or any provision thereof, is adjudged invalid, then and in that event I give, devise and bequeath all of the property disposed of, or attempted to be disposed of in said twenty-fourth clause, to my said two grandsons, George K. Sherman and John R. Sherman, for and during the term of their natural lives: and, in case of the death of one, then to his successor, and at and after the death of both of said grandsons I give, devise and bequeath the same absolutely, in fee-simple, to their heirs-at-law and next of kin each of said grandsons heirs-at-law and next of kin taking an equal one-half thereof, share and share alike, their heirs and assigns forever.

Twenty-seventh clause: It is my will, and I hereby direct that, should any legatee or devisee under this my will contest the validity hereof or oppose the probate of the same, or directly or indirectly start, institute or prosecute any action or proceeding for the purpose of having this will or any of the provisions thereof adjudged invalid, then any bequest or disposition herein made in favor of any such person or persons shall thereupon cease and be immediately revoked, cancelled and annulled, and all gifts, bequests, disposition or interests made in or to any of my property to such person or persons shall thereupon immediately become and form a part of the rest, residue and remainder of my estate, to be disposed of as hereinbefore directed, and as though such contestants were actually dead.

21 Twenty-eighth clause: It is my will that in case any direction or provision of this my will should be held illegal or void, or fail to take effect for any reason, no other part of this will shall be thereby invalidated, impaired or affected, but this my will shall be construed and take effect in the same manner as if the invalid direction or provision had not been contained therein: and, should any legacies herein lapse, the same shall go to and form a part of my residuary estate. Lastly, I hereby revoke all former wills and codicils by me at any time heretofore made.

In witness whereof, I have set my hand and seal to this my last will and testament, at Port Henry, New York, the third day of April, in the year one thousand eight hundred ninety-six (1896).

JANE H. SHERMAN. [SEAL.]

The foregoing instrument was at the date thereof subscribed by Jane H. Sherman, the testatrix, in the presence of both and each of us, and was at the same time in the presence of both and each of us declared by her to be her last will and testament, and we, at her request, in her presence and in the presence of each other, signed our names thereto as attesting witnesses:

F. A. ROWE,

Residing in Port Henry, N. Y.

E. W. HYDE,

Residing in Ticonderoga, N. Y.

(Here follow United States internal-revenue legacies and distributive shares, marked pp. 22 and 23.)

24

STATE OF NEW YORK, }
County of Albany, Northern District, }^{ss:}

George D. Sherman, being duly sworn, deposes and says that he is the petitioner in this proceeding; that he has heard read the foregoing petition and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

GEORGE D. SHERMAN.

Sworn to before me this 9th day of November, 1899.

EDWIN G. DAY,

[L. s.]

Notary Public, Albany Co., N. Y.

25

[Endorsed:] United States circuit court, northern district of New York. In the matter of the petition of George D. Sherman ag'st The United States. Copy. Petition. Patterson, Bulkeley & Van Kirk, attorneys for petitioner, 25 North Pearl street, Albany, N. Y. Due and personal service of — cop. of the within — admitted this — day of —, 189—. Orig. Filed Nov. 10, 1899. W. S. Doolittle, clerk.

26

UNITED STATES OF AMERICA, }
Northern District of New York, }^{ss:}

GEORGE D. SHERMAN }
vs.
THE UNITED STATES. }

Charles F. Roberson, of the city and county of Albany, being duly sworn, deposes and says that he is a stenographer in the office of Patterson, Bulkeley & Van Kirk, the attorneys for the plaintiff in the above-entitled action; that on the 10th day of November, 1899, there was filed in the clerk's office of the U. S. circuit court for the northern district of New York a petition in behalf of the above-named plaintiff against the United States of America; that there was mailed to Charles H. Brown, United States attorney for the

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northern district of New York, a copy of said petition, and also on the 13th day of November, 1890, there was mailed a copy of said petition to the Attorney General of the United States by registered letter, as provided by an act of Congress passed March 3, 1887.

CHARLES F. ROBERSON.

Subscribed and sworn to before me this 18th day of November,
1899.

[L., S.]

C. W. HIGGISON,
Notary Public, Oneida Co., N. Y.

27 United States Circuit Court, Northern District of New York.

GEORGE D. SHERMAN, Plaintiff,
against
THE UNITED STATES OF AMERICA, Defendant.

Please take notice that I appear for the above-named defendant in the above-entitled action and demand that a copy of all papers and notice in said action be served upon me at my office in Buffalo, N. Y. My post-office address is Buffalo, N. Y.

And the clerk of said court will please enter my appearance in the action as attorney for the defendant.

Dated Buffalo, N. Y., November 16, 1899.

Yours, &c., CHAS. H. BROWN,
*United States Attorney for the Northern District of
New York and Attorney for Defendant;
O. & P. O. Address, Buffalo, N. Y.*

To Messrs. Patterson, Bulkeley & Van Kirk, att'y's for plaintiff, Albany, N. Y., and to W. S. Doolittle, clerk U. S. circuit court, Utica, N. Y.

28 [Endorsed:] United States circuit court, northern district
of New York. George D. Sherman against The United States
of America. Copy. Notice of retainer. Charles H. Brown, United
States attorney for the northern district of New York and attorney
for defendant; office & P. O. address, Buffalo, N. Y. Orig. Filed
Nov. 17, '99. W. S. Doolittle, clerk.

29 United States Circuit —, Northern District of New York.

GEORGE D. SHERMAN, Plaintiff, }
 against }
THE UNITED STATES OF AMERICA, Defendant. }

The defendant above named, appearing by Charles H. Brown, United States attorney for the northern district of New York, hereby demurs to the petition or complaint herein, upon the ground

that it appears on the facts of said petition or complaint that the same does not state facts sufficient to constitute a cause of action.

Dated Buffalo, N. Y., November 16, 1899.

CHAS. H. BROWN,

United States Attorney for the Northern District of

New York and Attorney for Defendant:

O. & P. O. Address, Buffalo, N. Y.

30 [Endorsed:] United States circuit court, northern district of New York. George D. Sherman against The United States of America. Copy. Demur-er. Demurrer sustained. Nov. 18, 1899. Wm. J. Wallace, U. S. circuit judge. Charles H. Brown, United States attorney for the northern district of New York and attorney for the defendant; office & P. O. address, Buffalo, N. Y. Orig. Filed Nov. 17, '99. W. S. Doolittle, clerk.

31 At a term of the circuit court of the United States of America for the northern district of New York, held at the court-rooms, in the city of Albany, on the 18th day of November, in the year of our Lord one thousand eight hundred and ninety-nine.

Present: Hon. William J. Wallace, circuit judge.

GEORGE D. SHERMAN, Petitioner, }
against }
THE UNITED STATES, Defendant. }

This cause coming regularly on for trial upon the demurrer filed on the 17th day of November, 1899, to the petition duly filed herein, and after hearing Mr. Brown, United States attorney for the northern district of New York, of counsel for the defendant, in support of said demurrer, and Mr. Patterson, of counsel for the petitioner, in opposition thereto, and due deliberation having been had thereon—

It is ordered that the demurrer interposed by the defendant to said petition be, and the same is hereby, sustained.

And it is further ordered that the said petition be, and the same is hereby, dismissed with costs to the defendant, to be adjusted in the usual manner, and the clerk is hereby directed to enter judgment herein in accordance herewith.

WM. J. WALLACE.

32 [Endorsed:] Circuit court of the United States, northern district of New York. George D. Sherman, petitioner, against The United States, defendant. Order sustaining demurrer. Charles H. Brown, U. S. att'y & att'y for def't., Buffalo, N. Y. Orig. Filed Nov. 20, '99. W. S. Doolittle, clerk.

33 United States Circuit Court, Northern District of New York.

GEORGE D. SHERMAN, Petitioner, }
against
THE UNITED STATES, Defendant. }

The issues in the above-entitled cause having been joined by the defendant's filing a demurrer to the petition, and an order having been entered by the Honorable William J. Wallace, circuit judge, holding court, on the 20th day of November, 1899, directing that the said demurrer be sustained, and dismissing the petition with costs to the defendant, to be taxed, and directing entry of judgment for said costs, and the costs having been taxed by the clerk at the sum of \$10.00, now, on motion of Charles H. Brown, Esq., United States attorney, appearing for the defendant—

It is adjudged that the said demurrer filed in this proceeding by the said defendant to the petition of the plaintiff herein be, and is hereby, sustained, and that the said petition be, and is hereby, dismissed.

And it is further adjudged that the above-named defendant recover of the above-named petitioner the sum of \$10.00, his costs as taxed, and that the judgment be docketed in favor of said defendant and against said petitioner therefor, and that execution be issued against the said petitioner on said judgment.

Judgment signed, entered, and docketed this 20th day of November, 1899, at two o'clock in the afternoon.

W. S. DOOLITTLE, Clerk.

34 [Endorsed :] United States circuit court, northern district of New York. George D. Sherman, petitioner, against The United States, defendant. Judgment on demurrer. Charles H. Brown, U. S. att'y & att'y for def't, Buffalo, N. Y.

35 (Indorsement on cover :) United States circuit court, northern district of New York. George D. Sherman against The United States of America. Judgment-roll. Charles H. Brown, U. S. att'y and att'y for def't. Costs, \$10.00. Filed, entered, and docketed this twentieth day of November, 1899, at 2 o'clock in the afternoon. W. S. Doolittle, clerk.

36 In the Circuit Court of the United States for the Northern District of New York.

GEORGE D. SHERMAN, Plaintiff in Error, }
against
THE UNITED STATES, Defendant in Error. }

And now comes George D. Sherman, and considering himself aggrieved by the judgment entered herein on the 20th day of November, 1899, does hereby pray that a writ of error be allowed from the said judgment, returnable to the Supreme Court of the United States, and that a transcript of the record and proceedings and papers upon which said judgment was made, duly authenti-

cated, may be sent to the Supreme Court of the United States, and he presents herewith his assignment of errors.

CHARLES E. PATTERSON AND
ALPHEUS T. BULKELEY,

*Attorneys for Plaintiff in Error, No. 25 North Pearl Street,
Albany, New York.*

And now, to wit, on November 18th, 1899—

It is ordered that the writ of error be allowed as prayed for.

WM. J. WALLACE,
U. S. Circuit Judge.

37 [Endorsed:] United States circuit court, northern district of New York. George D. Sherman, plff in error, against The United States, def't in error. Copy. Petition & order allowing writ of error. Charles E. Patterson & Alpheus T. Bulkeley, attorneys for plff in error, 25 North Pearl street, Albany, N. Y. Due and personal service of — cop- of the within — admitted this — day of —, 189—. — — —, attorney for —. Orig. Filed Nov. 20, 1899. W. S. Doolittle, clerk.

38 United States Circuit Court, Northern District of New York.

GEORGE D. SHERMAN, Plaintiff in Error, }
 against }
THE UNITED STATES, Defendant in Error. }

Know all men by these presents that the United States Fidelity & Guaranty Company of Baltimore, in the State of Maryland, having a place for the transaction of business in the city of New York, State of New York, is held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid the said United States of America; for the payment of which, well and truly to be made, the said company binds itself, its successors and assigns, firmly by these presents.

Sealed with its seal. Dated the 18th day of November, in the year of our Lord eighteen hundred and ninety-nine.

Whereas the above-named George D. Sherman, plaintiff in error, has prosecuted a writ of error to the Supreme Court of the United States to reverse a decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the northern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named George D. Sherman, plaintiff in error, shall 39 prosecute his said writ of error to effect and answer all damages and costs if he fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THE UNITED STATES FIDELITY &
GUARANTY COMPANY OF BAL-
TIMORE, MARYLAND,
By ALPHEUS T. BULKELY,
JOHN V. McHARG,

Attorneys-in-fact. [L. s.]

Signed, sealed, delivered, taken, and acknowledged this 18th day of November, before me—

EDWIN G. DAY.

Approved as a supersedeas bond.

WM. J. WALLACE, U.S.C.J.

40

CITY OF ALBANY,
County of Albany, State of New York, }^{ss:}

On this 18th day of November, 1899, before me personally appeared Alpheus T. Bulkeley & John V. McHarg, attorneys-in-fact of the United States Fidelity and Guaranty Company, a corporation created and existing under and by virtue of the laws of the State of Maryland and duly authorized to transact business in the State of New York, with whom I am personally acquainted, who, being by me severally duly sworn, said that they resided in the city of Albany; that they are the attorneys-in-fact of the United States Fidelity and Guaranty Company; that they knew the corporate seal of said company; that the seal affixed to the annexed instrument is such corporate seal; that it was affixed thereto by order of the board of directors of said company, and that they signed said instrument as attorneys in-fact of said company by like authority; and the said Edwin G. Day further said that he is acquainted with Alpheus T. Bulkeley & John V. McHarg and knew them to be the attorneys-in-fact of said company, and that the signature of the said Alpheus T. Bulkeley & John V. McHarg subscribed to the said instrument is the genuine handwriting of the said Alpheus T. Bulkeley & John V. McHarg, and was thereto subscribed by the like order of the said board of directors and in the presence of him, the said Edwin G. Day.

EDWIN G. DAY, [L.S.]
Notary Public, Albany Co., N.Y.

At a special meeting of the board of directors of the United States Fidelity and Guaranty Company, held at the office of the company in the city of Baltimore, State of Maryland, on the 29th day of January, A.D. 1898, at which was present a quorum of said directors duly authorized to act in the premises, on motion it was unanimously—

Resolved, That in pursuance of section 811 of the Code of Civil Procedure of the State of New York, Alpheus T. Bulkeley & John V. McHarg, the attorneys-in-fact of the United States Fidelity and Guaranty Company for the county of Albany, Schoharie, Otsego, in the State of New York, be, and each of them is hereby, authorized and empowered to sign, execute, and deliver any and all bonds or undertakings for and on behalf of this company, and to attach thereto the seal of the company, the same to be attested by either one of the said attorneys-in-fact above named as occasion may require.

CITY OF ALBANY,
County of Albany, State of New York, }^{ss:}

We, Alpheus T. Bulkeley & John V. McHarg, attorneys-in-fact of the United States Fidelity and Guaranty Company, have compared the foregoing resolution with the original thereof, as recorded in the minute book of the said company, and do hereby certify that the same is a true and correct transcript therefrom and of the whole of said original resolution.

Given under my hand- and the seal of the company, at Albany, this 18th day of November, 1899.

[L. S.]

ALPHEUS T. BULKELEY,
JOHN V. MCHARG,

Attorneys-in-fact.

41 [Endorsed:] United States circuit court, northern district of New York. George D. Sherman, pl'ff in error, against The United States, def't in error. Copy. Undertaking on writ of error. Orig. Filed Nov. 20, '99. W. S. Doolittle, clerk.

42 Supreme Court of the United States, — Term, 1899.

GEORGE D. SHERMAN, Plaintiff in Error, }
against } Assignment of Errors.
THE UNITED STATES, Defendant in Error. }

Now comes George D. Sherman, by his counsel, and respectfully represents that he feels himself to be aggrieved by the proceedings and judgment of the circuit court of the United States for the northern district of New York, in the second judicial district, in the above-entitled cause, and assigns error thereto as follows:

I. The court erred in sustaining the demurrer and dismissing the appeal of the plaintiff in error herein.

II. The court erred in refusing to find, as was claimed by the plaintiff in error, that the imposition of the tax described in the complaint against the plaintiff in error because of his ownership as executor of the last will and testament of Jane H. Sherman, deceased, of the property mentioned in the complaint was unconstitutional, unlawful, and void.

III. The court erred in not deciding that the imposition and collection of said tax deprived this deponent of his property and the estate represented by him of its property without due process of law.

IV. Such circuit court erred in refusing to find that the law imposing said tax is not uniform and does not afford equal protection of the laws to persons throughout the United States.

V. The said circuit court erred in refusing to find that the law imposing said tax denied and does deny to persons throughout the United States and within its jurisdiction the equal protection of the laws.

VI. The court erred in refusing to find that the law under which

said tax was imposed denies to the plaintiff in error the equal protection of the laws.

VII. The court erred in refusing to find that the tax so imposed is a direct tax and is void because not apportioned among the States in proportion to their population and in accordance with the provisions of the Constitution of the United States.

VIII. The said court erred in refusing to find that if said tax is an impost, excise, or duty the law imposing the same is unconstitutional and void because the tax levied is not uniform throughout the United States, as required by the Constitution of the United States.

IX. The court erred in refusing to find that it is not within the province of the constitutional powers of the United States to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York.

X. The court erred in refusing to find that in so far as the estate of the deceased consisted of the Government bonds of the United States mentioned in said complaint the Congress had not right or authority to impose or assess any tax upon the same, and in refusing to find that the plaintiff in error was entitled to recover back from the defendant in error in this action the amount of the tax mentioned in his petition, and which was assessed against the plaintiff in error because of his ownership as executor as aforesaid of such bonds of the Government of the United States.

44 XI. The court erred in refusing to find that it is not within the province of the constitutional powers of the United States or of the Congress to levy a tax upon a right of inheritance or disposition by will provided for by the laws of the State of New York, or to create classes which may be lawfully regarded in the imposition of taxes, or to make distinction between classes by whom taxes must be paid or upon whom taxes may be imposed, or to recognize for the purposes of taxation any classes that may have been created by the State of New York, or to require the payment of a larger or different amount of tax from or imposed upon a legacy or a legatee because of the greater wealth of the donor of such legacy than is required when the legacy is a gift of a testator of smaller means.

XII. Because the said act is in other respects unconstitutional and void.

XIII. The court erred in that it refused to find that because of the matters set forth in the petition the plaintiff in error should have and recover from the United States the sum of \$8,969.02, together with interest thereon from the time of filing his petition, besides the costs of this proceeding.

Wherefore the said plaintiff in error prays this honorable court to examine and correct the errors assigned and for a reversal of the judgment of the circuit court of the United States for the northern district of New York entered in the above-entitled cause.

CHARLES E. PATTERSON AND
ALPHEUS T. BULKELEY,
Attorneys for Plaintiff in Error.

45 [Endorsed:] United States circuit court, northern district of New York. George D. Sherman, plff in error, against The United States, def't in error. Copy. Assignment of error. Charles E. Patterson & Alpheus T. Bulkeley, attorneys for plff in error, 25 North Pearl street, Albany, N. Y. Read. W. J. W. Due and personal service of — cop- of the within — admitted this — day of —, 189—. — — —, attorney for —. Orig. Filed Nov. 20, 1899.

46 Circuit Court of the United States, Northern District of New York.

GEORGE D. SHERMAN, Plaintiff in Error, }
against }
THE UNITED STATES, Defendant in Error. }

NORTHERN DISTRICT OF NEW YORK, } ss:
County of Albany, }

Jennie A. Rouse, being duly sworn, deposes and says that on this 18th day of November, 1899, she served the citation of which annexed hereto is a copy on the Honorable Charles H. Brown, United States attorney for the northern district of New York, an attorney for the defendant in the action mentioned in said citation, by depositing a true copy thereof in the post-office at the city of Albany, New York, properly addressed to the said Charles H. Brown, at Buffalo, New York, properly enveloped, and postage thereon duly prepaid.

JENNIE A. ROUSE.

Sworn to before me this 18th day of November, 1899.

[Seal of Edwin G. Day, Notary Public, Albany County, N. Y.]

EDWIN G. DAY,
Notary Public, Albany County.

47 UNITED STATES OF AMERICA, ss:

To the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of New York, wherein George D. Sherman is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, in the northern district of New York, on the 18th day of November, 1899, and of the Independence of the United States the one hundred and twenty-fourth.

W. M. J. WALLACE,
— United States Circuit Court, Northern District of New York.

48 [Endorsed:] United States circuit court, northern district of New York. George D. Sherman, pl'ff in error, against The United States, def't in error. Original. Citation. Charles E. Patterson & Alpheus T. Bulkeley, Patterson, Bulkeley & Van Kirk, attorneys for pl'ff in error, 25 North Pearl street, Albany, N. Y. Due and personal service of — cop- of the within — admitted this — day of —, 189—. — — —, attorney for —. U. S. circuit court, N. D. of N. Y. Filed Nov. 20, 1899. W. S. Doolittle, clerk.

49 UNITED STATES OF AMERICA,
Northern District of New York, }^{ss}:

I, William S. Doolittle, clerk of the circuit court of the United States of America for the northern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 48, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of George D. Sherman against The United States of America, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Utica, in the northern district of New York, in the second circuit, this twentieth day of November, in the year of our Lord one thousand eight hundred and ninety-nine, and of the

Independence of the said United States the one hundred and twenty-fourth.

W. S. DOOLITTLE, Clerk.

{ Ten-cent U. S. internal-revenue stamp, canceled }
Nov. 20, '99. W. S. D., clerk.

Endorsed on cover: File No., 17,573. N. New York C. C. U. S. Term No., 459. George D. Sherman, plaintiff in error, vs. The United States. Filed November 23rd, 1899.